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CURRENT TOPICS

New Year Honours

THE President of The Law Society, Mr. WILLIAM ALAN GILLETT, has been honoured in the New Year Honours List by the conferment of a knighthood. We tender our sincere congratulations. Other notable persons who were recipients of honours were Mr. ANTHONY FREDERICK INGHAM PICKFORD, Town Clerk of the City of London (Knight Bachelor), Mr. G. P. COLDSTREAM, Deputy Clerk of the Crown in Chancery, Lord Chancellor's Department (C.B.), the Hon. Sir JOHN PATRICK DWYER, Chief Justice of the Supreme Court of Western Australia (K.C.M.G.), the Hon. ROBERT KENNEDY, Senior Puisne Judge, Supreme Court of New Zealand (Knight Bachelor), Mr. ARTHUR TELFORD DONNELLY, Crown Solicitor, Christchurch, New Zealand (K.B.E.), Mr. CECIL FURNESS-SMITH, K.C., Chief Justice of Trinidad and Tobago (Knight Bachelor), Sir MICHAEL FRANCIS JOSEPH MCDONNELL, Chairman of the English Divisional Appellate Tribunal for Conscientious Objectors (K.B.E.), Mr. BERNARD KERR WHITE, Chief Registrar of Friendly Societies and Industrial Assurance Commissioner (K.B.E.), Major K. M. BEAUMONT, British representative on the Legal Committee of the International Civil Aviation Organisation, Montreal (C.B.E.), Mr. A. GREEN, Assistant Solicitor, Ministry of National Insurance (C.B.E.), and Mr. H. G. THORNLEY, Chairman of the Society of Clerks of the Peace and Clerk to the North Riding of Yorks (C.B.E.). A list of the honours of legal interest appears at p. 22 of this issue.

Committee to Review Punishments

THE Home Secretary has appointed a committee (*a*) to review the existing methods of punishment in prisons, Borstal institutions, approved schools and remand homes (other than corporal punishment in prisons and Borstal institutions); (*b*) to consider the procedure adopted in inquiries into breaches of discipline; and (*c*) to recommend whether any changes in the methods and procedure are necessary or desirable. Among distinguished members of the committee are Mrs. D. M. BATES, M.B.E. (Magistrate, Chairman of Leicester City Probation Committee), Mr. J. C. JOLLY, K.C. (Chairman of the Preston, Liverpool and Manchester County Quarter Sessions and the Lancaster County Quarter Sessions, Recorder of Preston, Member of Home Office Advisory Council on Treatment of Offenders), and Sir LEO PAGE (Visiting Justice, Member of Home Office Departmental Committee on Justices' Clerks, Member of Home Office Advisory Committee on Probation, Member of Home Office Advisory Council for Treatment of Offenders). The chairman is Mr. H. W. F. FRANKLIN (Headmaster of Epsom College). Anyone interested in the work of the committee is requested to communicate with one or other of the joint secretaries, Mr. D. PETTIGREW, of the Prison Commission, Westminster, S.W.1, and Mrs. M. G. KEWLEY, Children's Department, Home Office, S.W.1.

Eire and the Commonwealth

WHAT Mr. CHURCHILL recently called the "inclusion out" of the British Commonwealth has been enacted in Eire through the passing on 1st January, 1949, of two orders giving citizens of the United Kingdom, the British colonies and New Zealand rights in Eire similar to those which citizens of Eire possess in Britain. On 1st January, 1949, also, the British Nationality Act, 1948, came into force, and provides that citizens of Eire will have the same rights and privileges as are accorded to British citizens. Eire citizens had previously been British subjects under our law but not under the law of Eire. The British Nationality Act now excludes Eire nationals from British nationality, but it provides that an Eire national who was a British subject before the Act came into force shall not be deemed to have ceased to be a British subject under the Act if he gives notice in writing at any time to the Home Secretary claiming to remain a British subject on all or any of a number of specified grounds. The Act also provides that citizens of Eire who are not British subjects shall continue to be treated as British subjects, that the term alien shall not apply to them, and that Eire citizens resident in the United Kingdom and colonies shall have the same rights as citizens of other countries of the Commonwealth to become, if they wish, citizens of the United Kingdom and colonies. The legislation in both countries on this subject is paradoxical. It is even not without its humorous aspect, but so long as the humour is good humour, an accord on the subject, not of severing a link, but of what the link should be, will be a happy basis on which to build future relations.

Eire Trade-Mark Registration

TRADE with Eire will not be encouraged by a recent decision of the Eire Controller of Industrial and Commercial Property that registration would be permitted to an Eire applicant of a trade-mark comprising a name attached to a similar and well-known English brand of meat product. Those advising English manufacturers who wish to export to Eire would do well, as a consequence of this decision, to pay attention to the requirements of trade-mark law in Eire. In the recent case before the Controller, the English company had traded in Eire up to 1934 and their trade-mark had been registered in Great Britain. The Controller pointed out that facilities

for registration in Eire had been ignored until there appeared in the market like goods under a similar mark. Dealing with the English company's contention that they intended to resume trading at a future date, the Controller said that if they were to do so the British Government's restrictions would have to be relaxed, the import duty would have to be abolished and the Eire Package Tax would have to be withdrawn. Future trading might be very remote indeed, he concluded. The Controller seems to have blamed the English company for waiting until the horse was gone before attempting to lock the stable door, but it may legitimately be asked why, between friends, it should be thought necessary to lock the stable door. Business between individuals and nations is conducted on an assumption of mutual good faith, and it may be thought that judicial decisions should not be based on the assumption of the inevitability of wrongful user.

Town and Country Planning Act, 1947: Claims where "Dead-ripe" Certificate is applied for

As foreshadowed at p. 2, *ante*, owners of land, who have applied to the Minister of Town and Country Planning for a certificate under s. 80 that their land is ripe for development, are now advised by the Central Land Board to submit a "precautionary" claim on the £300 million fund to the Board before 30th June, 1949, in case the certificate is not granted. Only questions 1, 2, 3, 20 (*d*) (and question 24, where relevant) of Form S.1 need be filled in, and a copy of the completed answers to questions 1 to 4 of Form L.R.D.1 (the application to the Minister) must be attached. If the application is refused, the S.1 will be returned, *on notification to the Board by the claimant*, for the remaining questions to be answered. The usual contribution towards fees will be payable provided the necessary conditions are fulfilled including the completion of the optional part of the form. The Board's announcement adds that there may be rare cases where an owner who is completing an L.R.D.1 form wishes to claim for development value in his land over and above that to which the application relates. Such an owner should complete and submit Form S.1 in a normal manner, taking care to answer question 20 (*d*).

Cross-Examination

THE advocate who so far forgets himself as to lose his temper risks losing his case. There are no doubt cases which call for righteous indignation, but the introduction of such an emotion into the conduct of a case should be strictly subordinated to the interests of justice. Cross-examination, as a learned judge once said, does not mean examining crossly, and the more cool and detached the attitude of the cross-examiner, the better he serves his client's interests as well as those of justice. In the second of two articles on "Public Inquiries," in the *Local Government Chronicle* of 11th December, 1948, some observations on the subject of cross-examination are made, which, subject to the above general principle, should be useful to the young advocate, and to some old ones. One point made deals with the hackneyed objection that because a particular question was not put in cross-examination, the fact with which it deals was not challenged. Even judges have erred on this by basing a finding of fact on the failure to challenge it in cross-examination. There are many reasons why every point of difference cannot be challenged, the chief being that it would be wasting time to put a question which will obviously be repudiated. Another important point made by the writer is that the competent cross-examiner always knows the answer to his question before he asks for it, apart from questions as to credit. Experienced solicitors are familiar with this rule, which may best be paraphrased into the form of a maxim reminiscent of Mr. Punch's famous advice to those about to marry—"If in doubt, don't put the question."

Education for Professional Responsibility

EXPERIMENTATION and pioneering in professional education are in favour in the U.S.A., to judge from a report of proceedings of an Inter-Professions Conference on Education for Professional Responsibility held in Pennsylvania in April, 1948, a copy of which we have recently received (Pittsburgh, Carnegie Press). The accent of most of the contributions seems to be on the word "responsibility." For instance, Dean WILBER G. KATZ, of the University of Chicago Law School, favours the introduction, as in his school, of a course in industrial organisation, with economists in charge, and a general course of reading such varied works as Plato's "Gorgias," Freud's "Civilization and its Discontents" and Dewey's "Human Nature and Society." Professor LON L. FULLER, of Harvard University, rejects this view, as he rejects the view that a student can be taught to be a lawyer in a few years, the task of legal education being merely to start him on a programme of self-education. Nor does he hold with the teaching of techniques, such as that which consisted in a psychologist training a student to use words that will evoke sympathetic responses on the part of judges. He describes this as "the academic equivalent of boondoggling." He recommends exercises in negotiation and draftsmanship as well as in the "permanent problem" of advocacy, "attempting to transmit intact a set of facts from one human head to another." Professor KARL N. LLEWELLYN, of the Columbia University Law School, makes the most practical contribution in his recommendation of what he calls "teaching hands and feet" in arguing cases rather than providing lists of ready-made solutions in judicial decisions. We on this side of the Atlantic may with profit reflect upon and inwardly digest the opinion that the law school should aim at producing not only a craftsman but also a citizen whose work is centred on problems of government.

A Royal Charter

THE organisation of a sister profession is always of interest to solicitors, especially when it is a profession which presents many points of resemblance to their own. For example, the requirements of both The Law Society and the Institute of Chartered Accountants include the training through the means of a five years' period of articles. Some interesting departures are to be found in the second Royal Charter granted to the Institute of Chartered Accountants, dated the 21st December, 1948, on which date the whole of the administrative clauses of the Royal Charter of 1880 ceased to operate and were superseded by those of the new Charter, whilst a new set of by-laws replaced those previously in operation. New resolutions of the Council came into force on 21st December, 1948. One of these permits an articled clerk, with the consent of his principal, to spend periods not amounting to more than six months in all in such industrial, commercial or other suitable organisation as the Council may approve, subject to such conditions and control as the Council may impose or exercise. The *Accountant* for 1st January, 1949, rightly emphasises the Council's control of this power. Even more important is the new requirement that every articled clerk must join a students' society. We congratulate the Institute on its newly affirmed dignity and wish it a long and useful future.

"The Solicitors' Journal": Annual Index

THE Annual Index and List of Statutes to Volume 92, covering the period 3rd January to 25th December, 1948, is now in the hands of the printer and will be posted to subscribers during the next week or two. This will enable subscribers to forward issues for binding in the official covers: details of binding styles were enclosed with our issue of 25th December last. It is regretted that very few issues published in 1948 remain available and subscribers are asked to make certain that the volume is complete before dispatching for binding.

Recent Decision

In a case in the Court of Appeal, BUCKNILL and SINGLETON, L.JJ., held, on 21st December (*The Times*, 22nd December, 1948), that a bookmaker's account rendered weekly was not in law an account stated, but merely a weekly statement in which the balance was carried forward to the next week.

Taxation

SPECIAL CONTRIBUTION AND TRUSTS—II

(References are to the Finance Act, 1948)

WHERE the investment income of a "contributor" (using that word in the sense of an individual assessed to contribution) includes or comprises income arising under a trust (other than a trust constituted in pursuance of a unit trust scheme), special rules apply as to who is to pay the proportion of the contribution attributable to his trust income, and who is to bear it ultimately. The general effect of these rules is that such proportion is borne, not by the contributor, but by the capital of the trust. If any property or fund is held as to different parts on different trusts, each part must be treated as a separate trust and will bear its own share of the contribution.

Trust proportion of the contribution.—The proportion of the contribution attributable to the contributor's trust income, which is here for convenience called "the trust proportion," is the proportion which his trust income bears to his aggregate investment income (s. 56 (1)). For the purpose of making this apportionment, aggregate investment income is computed without deducting rent, interest, annuities and other annual payments, which may be proper deductions in ascertaining aggregate investment income for the purpose of calculating the amount of the contribution. This means, in effect, that the trust proportion of the contribution is found on the footing that such annual charges are payable rateably out of the contributor's trust income and his other investment income. This provision appears to produce a somewhat illogical result in those cases where annual payments relate specifically either to trust or to non-trust income: for instance, consider the case of a contributor whose trust income was £300 and whose only other investment income was £300 net annual value of a house owned by him, on which he paid £250 a year mortgage interest. His aggregate investment income for calculating the contribution would be £350, almost all of which represents income arising under the trust, yet by reason of the rule that the trust proportion of the contribution must be calculated by ignoring mortgage interest, only one-half of the contribution is treated as relating to his trust income, since that income is one-half of his gross investment income.

Payment of the contribution by the contributor.—A contributor, when faced with an assessment to contribution in respect of income including trust income, may adopt one of three courses:—

(*a*) He may pay the whole of the contribution, and recover the trust proportion from the trustees or others connected with the trust.

(*b*) He may pay only that part of the contribution which is attributable to his non-trust income, and leave it to the Revenue to recover the remainder from the trustees or others.

(*c*) He may pay more than his own proportion of the contribution, and yet not the whole. There seems no particular reason for adopting this course, but it may happen through inadvertence or through miscalculating the amount of the trust proportion. In that event, the Revenue will automatically repay to him the part of the trust proportion which he has paid (unless he requests them not to do so), and themselves recover from the trustees or others the whole of the trust proportion.

In case (*b*) above, the contributor may merely refrain from paying the trust proportion for twenty-eight days after the due date, or instead he may give notice in writing to the Special Commissioners requesting reduction of his liability by the amount of the trust proportion. The only point of making such a request seems to be to throw on the Revenue the work of calculating the amount of the trust proportion.

In case (*c*) above, if the contributor does not require to be repaid the part of the trust proportion which he has paid, he can give notice in writing to the Special Commissioners to that effect, and thereupon the liability of the trustees or others will be reduced to that extent, but the contributor should not take this course unless he wishes for some reason personally to bear a liability which he could throw on to the trust.

Payment of the contribution by trustees.—From what has been said in the previous paragraph, it will now be apparent in what cases the Revenue has the right to recover the trust proportion of the contribution from the trustees or others connected with the settlement. This right arises in three cases:—

(*a*) Where the contributor has refrained from paying any part of the trust proportion.

(*b*) Where the contributor has given notice requesting exemption from payment of the trust proportion.

(*c*) Where the contributor has paid part of the trust proportion, and that part has been repaid to him by the Revenue.

In those cases the Revenue recover from the trustees, or from the tenant for life in the case of a Settled Land Act settlement, if the trust is continuing. If the trust has come to an end, recovery is made from the beneficiaries under the trust, as explained below, and if the income of the trust arises from a second trust, the liability may be thrown on the trustees of the second trust, and so on successively, as also explained below.

Recovery of trust proportion paid by the contributor.—The contributor can recover the trust proportion of the contribution from the trustees or others only if he has paid the whole thereof (s. 56 (1)), and has given notice to them, within six months of the payment, of his intention to exercise his right of recovery (s. 56 (6)). It is important to observe this six months' time limit, as otherwise the contributor will be unable to recover, unless the trustees are agreeable to paying.

Recovery of trust proportion from beneficiaries of the trust.—If the contributor's trust income arose under a trust or Settled Land Act settlement which has come to an end, recovery (either by the contributor, or by the Revenue, as the case may be), may be made from the person who immediately after the trust came to an end was entitled at law to the trust property or fund (s. 56 (3) (*b*)). It will be observed that persons from whom recovery may be made under this provision include not only beneficiaries or their assignees entitled in their own right, but also beneficiaries or their assignees who become entitled at law only and not in equity, e.g., the personal representatives of a deceased beneficiary, or the trustees of a derivative settlement created by a beneficiary. If more than one person was entitled to the trust property or fund immediately after the trust came to an end, recovery is made from the persons who were then so entitled in proportion to the value of their interests therein. Recovery is not permitted from a mortgagee or chargee of a beneficiary's share; if such mortgage or charge exists, recovery is made from the person who would have been entitled but for the mortgage or charge (s. 56 (3) (*b*), proviso).

A trust is deemed to have come to an end when any person has become entitled thereunder to capital, and the trust property has in consequence thereof become vested in that person or an assignee of his interest (s. 56 (3)). Accordingly, so long as the trustees hold the trust property, the trust proportion of the contribution may be recovered from them, even if the beneficiaries have become absolutely entitled to the capital. If a part only of the trust property has become so vested in a person entitled, recovery may be made from the trustees and that person rateably.

It appears from the above provisions that trustees can safely distribute a trust fund, on the termination of the trust, without reserving for any possible liability to contribution, unless recovery has already been claimed from them.

Successive trusts.—Where income of the trust (called "the first trust") under which the contributor's trust income arose was derived in whole or in part from another trust (called "the second trust"), recovery of an appropriate part of the contribution may be made by the contributor, or the Revenue, as the case may be, from the second trustees, and not from the first trustees, if the first trustees give notice in writing to that effect to the contributor, if it is he who is claiming recovery, or to the Special Commissioners before the assessment has become final against the first trustees, if it is the Revenue who are claiming (s. 56 (4)). Similar principles apply to third and successive trusts. The trustees of the first trust, within one month of receiving notice from the contributor requiring payment, must give notice in writing to the trustees of the second trust (or to the tenant for life, if it is a Settled Land Act settlement). This one month's time limit must be carefully observed, as otherwise the trustees of the first trust will find themselves liable for payment, with no right to throw that liability on to the trustees of the second trust. If it is the Revenue who are demanding payment from the first trustees, there appears to be no such obligation to notify the second trustees, doubtless because the Revenue are not subject to a six months' time limit as is the contributor, and can therefore at their leisure proceed to demand payment from the trustees of the second trust.

Looking at the matter now from the contributor's point of view, if he has demanded payment from trustees, and they have notified him that part of the trust income arises from a second trust, he must claim recovery from the second trustees within six months of the date when he paid the contribution, and he will be able to recover it from them, provided that the first trustees duly gave them the necessary one month's notice; if they did not do so, the contributor's right of recovery against the first trustees is preserved.

The appropriate part of the contribution recoverable from the second trustees is that proportion of the trust proportion of the contribution which the income of the first trust derived from the second trust bears to the total income of the first trust (s. 56 (5)). In ascertaining the amount of the income of the first trust derived from the second trust, no account is taken of the income derived from the capital, etc., of the second trust. The total income of the first trust is ascertained in the same way as the income of a trust is calculated under s. 53 (2), as explained in the previous article (p. 6, *ante*).

Raising and paying the trust proportion of the contribution.—Trustees or tenants for life may, for the purpose of paying that part of the contribution which falls to be paid by them, or repaid by them to the contributor, exercise any of their powers of applying or directing the application of capital money, and of raising money by mortgage. These powers are to be found in the Settled Land Act, 1925, and in that Act as applied by s. 28 of the Law of Property Act, 1925.

Incidence of the trust proportion of the contribution.—Probably the most important matter for the practitioner's attention is the question which beneficial interests under the trusts are to bear the burden of the trust proportion of the contribution. The Act provides (s. 57 (2)) that as between the persons interested (whether in income or capital) under a trust, the law relating to the ultimate incidence of estate duty shall apply as though the trust proportion were estate duty charged on the property from which the income arises, in respect of the cesser on 5th April, 1948, of a life interest having priority to other interests under the trust. It is provided that the payment is to be borne as though it were estate duty charged on property not passing to the executor as such; this means that it will be a first charge on such property. Accordingly the persons to suffer the loss of capital attributable to the payment will be those who become ultimately entitled to the trust property from which the contributor's income arose, rateably according to their respective interests therein. If the contributor was entitled to a share only of the income of the property, the burden will fall on a corresponding share of the capital (s. 57 (3)). As regards loss of income due to the application of capital in payment of the contribution, this loss will fall on the contributor so long as he is entitled to the income from the property, and whoever succeeds him in title to that income will similarly suffer the loss. There is a proviso to s. 57 (2) which says that, as between any annuity, other than the annuity giving rise to the contribution, the amount shall be borne by the other interests to the exoneration of the annuity. The provisions of the Act as regards incidence are so sketchy that many matters are left in doubt, and difficult cases may well necessitate application to the court for directions. A consideration of one or two illustrations may be of assistance.

Suppose that the contributor is life tenant of a settled fund, which will devolve after his death in one of three ways; (*a*) equally among his three children; (*b*) £5,000 to A and the residue to B; (*c*) an annuity of £500 a year to his widow, and subject thereto to C. In all these cases the trust proportion of the contribution is paid out of the capital of the fund, because the contributor's trust income arose therefrom, and he thereby suffers the reduction of income during his life. On his death, in case (*a*) the reduced capital fund is divided among his three children, who therefore suffer the loss of capital equally. In case (*b*) it would appear that the amount of the contribution will be borne rateably by the £5,000 legacy and the residue according to their respective values at the date of the contributor's death, in accordance with the rule that duty on property not passing to the executor as such is borne by the beneficial interests rateably (*Re Hicklin, Public Trustee* v. *Hoare* [1917] 2 Ch. 278). In case (*c*) the annuity to the widow will be payable in full, because the proviso to s. 57 (2) so requires, so that C will suffer the loss of income during the life of the annuitant and eventually the loss of capital.

Consider now the case where the contributor is not entitled to the whole income of the fund, but only to an annuity or fractional share, and after his death his widow becomes entitled to that annuity or fractional share. The trust proportion of the contribution will be paid out of the capital fund, and the contributor's income must be reduced by an amount corresponding to the income arising from the capital so disposed of. This result will be achieved by finding the capital value of the whole fund and the income produced thereby; this will be the yield from the fund, and the contributor's income will be reduced by the amount of a similar yield calculated on the amount of the contribution borne by the trust fund (*Re Parker-Jervis, Salt* v. *Locker* [1898] 2 Ch. 643). On the death of the contributor, his widow's annuity or fractional share of income will suffer a similar reduction, because she succeeds to the income enjoyed by the deceased (*Betts Brown's Trustees* v. *Whately Smith* [1941] S.C. 69). In spite of the proviso to s. 57 (2), the widow's annuity will be reduced, because it is the annuity by reason of which the trust proportion of the contribution fell to be paid.

Limitation of liability of trustees.—Where, on a claim being made against a trustee or tenant for life, either by the Revenue for payment of the contribution, or by the contributor for reimbursement, the trustee or tenant for life shows to the satisfaction of the Special Commissioners that his rights of indemnification out of the trust estate are, otherwise than by his negligence or default, insufficient to provide for his reimbursement, the Commissioners are to give such directions for the limitation or release of his liability as appear just and equitable (s. 63 (1)). If the result of such directions is to deprive the contributor of his right to recover any amount from the trustee or tenant for life, the Special Commissioners are to repay that amount to him (s. 63 (2)).

C. N. B.

Mr. C. Ashton, Town Clerk of Derby since 1932, has resigned his post owing to ill-health.

Mr. F. W. Butler, coroner at Horsham for nearly fifty-four years, retired on 30th December at the age of ninety.

Company Law and Practice

DISCLOSURE OF DIRECTORS' REMUNERATION UNDER THE COMPANIES ACT, 1948

THE provisions for disclosure of directors' remuneration under the Companies Act, 1929, did not cover a wide enough field and proved inadequate in practice. It is true that s. 128 of that Act provided that the accounts of a company should disclose the total amount payable to directors as remuneration for their services, inclusive of fees, percentages or other emoluments paid to them by the company or a subsidiary. It is also true that s. 148 of the 1929 Act made further provision for disclosure at the instance of one-quarter of the votes of the company. These provisions of the 1929 Act, however, had three main defects: First of all s. 128 did not apply to managing directors, nor, in the case of a director holding a salaried appointment in the company, were sums paid to him otherwise than as a director's fees to be included. As a consequence of this, although the practice cannot be said to have been very wide, the Cohen Committee found that a number of companies had appointed all their directors managing directors so as to avoid disclosure. The Cohen Committee also found that the increasing tendency (which it did not deprecate) of including on boards of directors men who also held managerial positions in the company had the result that the information given to shareholders under s. 128 did not disclose the full emoluments received by such directors. Secondly, although the term "emoluments" included, *inter alia*, the money value of any allowances or perquisites appertaining to a director's office, it did not include expense allowances, even though such expenses might be assessed to tax as income of the directors. Finally, as to s. 148 of the 1929 Act, it will be recalled that provision was made that members of a company who were entitled to not less than one-fourth of the aggregate number of votes could require from the directors a statement, certified by the auditors as correct, showing the aggregate amount received by the directors by way of remuneration over the past three financial years. In this case managing directors were not excluded and any amount paid by the company by way of income tax on behalf of directors had also to be included in the aggregate. Section 148 was in fact doomed in advance to failure, as not only was it necessary to muster the requisite voting power before the section could be operated at all but, once mustered, the demand for the statement could be overriden by a simple majority. It is clear from this that any board of directors who could command a majority in a general meeting of the company were immune.

The Cohen Committee took the line that shareholders were fully entitled to aggregate disclosure of directors' remuneration, so that they could be in a position to assess as a whole whether they were getting proper value for money. They did not extend this to the disclosure of amounts paid to individual directors, because the shareholders were not in a position to judge the services given by any individual director without detailed information of a kind not readily available.

The 1948 Act has closely followed the recommendations of the Cohen Committee's Report as set out in paras. 88, 90 and 92-94. These provisions may be summarised under five headings:—

(1) Disclosure of emoluments.

(2) Disclosure of directors' or past directors' pensions.

(3) Disclosure of the amount of any compensation to directors or past directors in respect of loss of office.

(4) The prohibition of tax-free remuneration to directors.

(5) The prohibition of loans to directors. (This latter will form the subject of a later article.)

The disclosures in (1), (2) and (3), above, are required by s. 196 of the Act and with regard to each of them all relevant sums must be included whether paid by the company or its subsidiaries or by any other person, unless they are sums for which there is a liability to account to the company. Section 196 deals with each of these three heads in turn and its provisions may be summarised as follows:—

(1) The word "emolument" is to include not only fees and percentages, but also expenses in so far as they are charged to income tax, any contribution paid in respect of the directors under any pension scheme, and the estimated money value of any other benefits received by them otherwise than in cash. How strictly this provision should be construed in practice is a matter of doubt, and it is not possible at this stage to offer any useful guidance on the point. It is a question which must await clarification until further experience has been acquired of the workings of the provision. The aggregate disclosure under this head must include all emoluments paid to any person for his services as director or in respect of his services (while a director of the company) as director of any subsidiaries, or in connection with the management of the affairs of the company or any subsidiary. A distinction must also be made between emoluments in respect of services as a director and other emoluments.

(2) "Pensions" and "pension schemes" are fully defined in s. 196 (3) of the Act. The aggregate disclosure in this case should not include pensions paid under a scheme if the contributions are substantially adequate for the scheme's maintenance. Any such contributions paid by the company would, of course, fall under (1) above. The aggregate must include pensions paid to a director or a past director in respect of his services as director as defined in (1) above; and this is so whether the pension is payable to him, his nominee, dependant or other person.

(3) In the case of compensation for loss of office the aggregate disclosure required by s. 196 of the Act should include any sum received as compensation for loss of office not only as a director of the company but also for any loss (while director of the company or on, or in connection with, his ceasing to be a director of the company) of any other office in connection with the management of the affairs of the company or any subsidiary. A distinction must here be made between compensation in respect of the office of director and that in respect of other offices. With regard to the provisions of s. 196, the following two points should also be noted. First, the word "subsidiary" is given an extended meaning and, in effect, if any company has power to nominate a director of another company, the latter company is the subsidiary of the former. Secondly, the onus of providing the information required under the section lies on the directors themselves (s. 198). In this connection s. 198 (3) provides that disclosure must be made (in so far as it is required, *inter alia*, for the purposes of s. 196) in relation to any persons who are or who have been officers of the company at any time during the preceding five years.

(4) Tax-free remuneration is now prohibited. The Cohen Committee recommended this prohibition, first of all on the grounds that it created a class of persons immune from increases in (direct) taxation, and secondly, because the amount borne by the company (and in effect the directors' total remuneration as paid by the company) must vary with the total income of the director from all sources. The only exception under s. 189 is in the case of a contract which was in force on the 18th July, 1945, and which provides expressly, and not merely by reference to the articles, for such tax-free remuneration.

It will be seen from these foregoing provisions that the 1948 Act aims at a greater measure of control and disclosure of directors' remuneration than did the Act of 1929. Full disclosure is now provided for shareholders by the Act, so that they can make their own reckoning of the value of their directors' services to their company. The Act has done its best, and if there are justifiable causes for complaint it is up to the shareholders to take action.

N. P. M. E.

A Conveyancer's Diary

TOWN PLANNING COVENANTS IN MORTGAGE DEEDS

DRAWING covenants for inclusion in a mortgage instrument requires at all times a nice sense of balance. There is no other conveyancing transaction where the interests of the parties are more likely to come into conflict, or where their due reconciliation occasions greater difficulty. It is, therefore, far from easy to determine what sort of covenants one should insert, or be prepared to accept, as the case may be, for the purpose of regulating the many varied circumstances which may result from the exercise of planning control over the mortgaged land.

But before making any positive suggestions, a word of warning may not be out of place. I have more than once seen a type of covenant which, in my opinion, no borrower in his right senses, or at least no borrower who is properly advised, should ever accept. Stripped of verbiage, the covenant is one whereby the borrower undertakes that during the currency of the security he will comply with, or not commit any breach of, the provisions of the Town and Country Planning Act, 1947; and for this purpose the Act is usually defined as including any orders, regulations, directions and notices made or served under the Act. Now the present code of town planning legislation is so vast, complex and amorphous that it is next to impossible for any person to know with any degree of certainty whether something he wishes to do on the land does, or does not, constitute a development of the land. Examples are superfluous: everybody can think out a few such knotty problems for himself. Yet under a covenant in this form a completely innocent breach of this code, however trivial in character, will immediately render exercisable the mortgagee's power of sale. I feel certain that the matter has only to be put in this way for the great majority of my readers to realise, if they have not had occasion to reflect on this question before, that from the borrower's point of view a covenant in this form is grossly oppressive, and goes far beyond anything which is really required to protect the mortgagee.

On the other hand, some protection the mortgagee is clearly entitled to: the question is to define its limits. Development as such cannot, of course, adversely affect the value of the security, and the thing which the mortgagee must guard against is not development of the land, but development carried out without permission in circumstances which are likely to attract the attention of the appropriate authority. It will doubtless always be necessary, or highly desirable, for a borrower to covenant that he will comply with any enforcement notice or order, but this is not quite enough for, by the time that an enforcement order or notice is made or served, the mischief (in the way of depreciation of the value of the security) may be done. The mortgagee should, I think, be given power to intervene at an earlier stage.

This may be provided for by a covenant in the form that, if there shall be any breach of planning control, the mortgagee may by notice require the borrower to remedy the breach within a reasonable time. It is then for the mortgagee to decide, in each case, whether any breach of planning control which comes to his notice is substantial enough to be worth bothering about. If he so decides, the borrower's position is also safeguarded. He is given a *locus pœnitentiæ*, before the power of sale can become exercisable, and he can in any case test the validity of the mortgagee's notice under the clause by application to the court in a convenient way.

I suggest the following form of borrower's covenant covering planning points for inclusion in mortgage deeds, as a form which is fairly comprehensive and reasonably framed from the point of view of both parties:—

"The borrower hereby covenants with the mortgagee—

(i) That if any enforcement or other notice or order shall be served or made under or by virtue of the Town and Country Planning Act, 1947, requiring the discontinuance of or imposing conditions on any use of the premises or any part thereof or requiring the removal or alteration of any works or buildings thereon the borrower will at his own expense in all things comply with the requirements of any such notice or order within any time which may thereby be specified for compliance therewith or within a period of not more than three months from the date thereof (whichever shall be the shorter)

(ii) That if there shall be any failure to comply with the requirements of the said Act or of any order regulation direction or notice made given or served thereunder in respect of the premises whether the borrower shall be aware of such failure or not the mortgagee shall be at liberty to serve upon the borrower notice in writing specifying any such failure and requiring the borrower to comply with such requirements as aforesaid and thereupon the borrower will within two months of the service upon him of such last-mentioned notice comply with the same

(iii) That in the event of the service of any such notice or the making of any such order as is referred to in paragraph (i) of this clause the borrower will not later than seven days after the same shall have come to his notice send or otherwise bring any such notice or order or a duplicate copy thereof to or to the knowledge of the mortgagee

(iv) That if the borrower shall at any time apply for permission to carry out any development of the premises within the meaning of the said Act and such permission shall be granted subject to any conditions the borrower will comply with the same."

I do not see much point in extending this form to include an undertaking by the borrower to inform the mortgagee of any matter which may arise under the Act, e.g., an application for permission and its grant or refusal. If the borrower develops his land that, surely, is his own business, provided he obtains the necessary consents and complies with their terms. But if para. (iii) is widened to cover an undertaking in a wider form on these lines, para. (iv) will probably be found unnecessary.

"A B C"

Landlord and Tenant Notebook

THE LANDLORD AND TENANT (RENT CONTROL) BILL

THE changes proposed by this Bill are of three kinds, and respectively concern: the standard rents of houses controlled by the Rent and Mortgage Interest Restrictions Act, 1939, but first let after 14th August, 1945; the position of parties to a *Neale and Del Soto* tenancy; and security of tenure of furnished dwellings within the Furnished Houses (Rent Control) Act, 1946. While the Bill remains such, detailed discussion of the proposals is not desirable; but a general survey and some reference to points which would particularly affect the practitioner may be useful.

The standard rent proposal is that the standard rent of a dwelling-house first let after 14th August, 1945, shall be determined not by the figure at which it was so first let but by reference to what is considered, by a tribunal, a reasonable rent for that dwelling-house. Further, if a premium has been paid on the grant (or continuance or renewal) of such a tenancy, the "rental equivalent" of that premium is to be calculated according to length and nature of term, the tenant then being given the right to deduct this equivalent. Consequential provision is to be made to reduce rents which

have been settled by, and to alter existing, apportionments. And local authorities are to keep a register recording what has been determined.

Some of the above proposals contemplate somewhat elaborate calculation, e.g., those by which the "rental equivalent" mentioned is to be worked out in the case of a periodic tenancy. But of the substantive changes contemplated, I think that the new norm will cause those called upon to advise landlords and tenants most trouble; and of those relating to procedure, the intention to entrust determination to tribunals constituted under the Furnished Houses (Rent Control) Act, 1946, will cause practitioners most anxiety.

The old standard rent norm has undoubtedly been known to effect injustice not contemplated by those who framed it, especially in the case of 1939-controlled houses in areas subjected to air raids. When such raids were at their height, A might evacuate himself or his family or both and let his house at a low figure; B, who owned a precisely similar house next door, might not let it till raids were or seemed to be a thing of the past, and, thanks to the shortage, might obtain a far higher rental. However, the practitioner could, and can, advise on what the standard rent was, or is, in such cases. But the rent of those dwelling-houses to which the contemplated legislation is to apply is to be what rent is reasonable, and the only indication of what this means is that it shall be the rent which is in all the circumstances reasonable on the letting of that dwelling-house on the terms and conditions, other than terms and conditions fixing the amount of rent, on which it is let. Those familiar with the operation of the Furnished Houses (Rent Control) Act, 1946, will recall the difficulty of advising on what was meant by "approve the rent payable . . . or reduce it to such sum as they may, in all the circumstances, think reasonable." What are "all the circumstances"? If A is left a house by somebody's will, B buys an identical house at its current market value, C buys another similar house from a vendor who is a out to emigrate and lets it go cheap, are the rents payable by tenants to whom they may let them to vary? Anyone disposed to answer "no" without considering the question worthy of reflection should refer to para. 8 of Sched. I to the Furnished Houses (Rent Control) Act Regulations, 1946, when he will see that the information which the tribunal concerned may require the lessor to supply (under s. 2 (1) of the Act) includes how he became owner and at what cost, or what rent he is paying if he is not the owner. (He is not obliged to give corresponding particulars about furniture.) This suggests that those who prepared the regulation had in mind the "extortionate profit" provisions of s. 10 of the 1920 Act.

Incidentally, the machinery of the law is, in these cases, to be set in motion by an *application* by the tenant, who will presumably have to prove his case without the assistance of "information required." The function of the tribunal is not to be inquisitorial as in the case of a "reference."

The *Neale and Del Soto* position is dealt with by dividing such cases into two kinds. It will be remembered that one of the latest of the many satellite decisions, *Banks* v. *Cope-Brown* [1948] 2 All E.R. 76, showed that whether the sharing of "vital living accommodation" (which prevents the dwelling-house from being one separately let and the Acts from applying to it) was between landlord and tenant or tenant and someone else did not matter. The Bill proposes to bring both kinds of case under control; but not under the same control. Those cases in which the sharing is with the landlord are to be assigned to the Furnished Houses (Rent Control) Act, 1946, notwithstanding the fact that the rent does not include payment for the use of furniture or for services. This may have been suggested by the consideration that often the alleged tenancy in such circumstances looks very like a mere licence (in *Neale* v. *Del Soto* itself this was the case, and in *Cole* v. *Harris* [1945] K.B. 474 (C.A.), MacKinnon, L.J., considered the decision as based on the conclusion that the agreement was one to take in a lodger), and possibly by the further consideration that it is even more irksome for a landlady to have to deal with adverse claims to what is "her own" kitchen than it is for another tenant to have such trouble, so that indefinite security of tenure would cause more suffering. But the change relating to accommodation not shared with the landlord calls for a good deal of consequential provision in the matters of standard rent, transfer of burden, etc. Also, it is proposed to empower county courts to vary tenancies, no doubt in the interests of peace. Lastly, it should be noted that the intention is that these provisions (both kinds) shall be retrospective in that they are to apply to tenancies which commenced before the Act becomes such; this would not, of course, mean that any tenancy terminated before that date will be revived.

It is possible, if the point be not dealt with before enactment of the Bill, that nice problems will arise out of the death of some grantee enjoying a right to share vital living accommodation with another grantee, such death effecting a termination of the grant. If the grantor thereupon becomes entitled to possession of what the deceased occupied, will there be a transfer of the other accommodation from "unfurnished" to "furnished" control?

Lastly, the Furnished Houses (Rent Control) Act is to be amended by authorising tribunals to extend the three months' "security of tenure" which (by s. 5) is automatically brought about by a notice to quit unless the tribunal substitutes a shorter period. The maximum extension is to be a further three months. While the object is clear and the proposal seeks to remedy a widefelt grievance, I cannot help thinking that it will cause "lessors" of furnished accommodation and their advisers to consider more seriously the advisability of granting fixed terms (which s. 5 of the Act cannot affect).

R. B.

COMING OF AGE

THE status of infancy is one with which both the common law and equity are greatly concerned. An infant cannot make a will or directly hold a legal estate in land; his contracts are in most cases voidable and in some cases void. He cannot marry without the consent of his lawful guardian, unless the refusal to give such consent is overridden by a court of summary jurisdiction. He remains under the custody and control of his parents or guardian, and in the holding of property he is not *sui juris*: equity will intervene to prevent his being forced or cajoled into any assignment or surrender of his property rights, and he cannot be made bankrupt. Up to a certain age he is compulsorily educated and is entitled to such education free of charge; a number of Statutes protect him from exploitation by baby-farmers, parents, employers and trustees. So surrounded and hedged-in does he appear to be with legal protection from the dangers and mischances of the world, that it may seem a matter for wonder that he grows up with any initiative or any power of self-expression at all. The fact that, under the English legal system, majority is not attained until the comparatively late age of twenty-one, as contrasted with Moslem law, where the attainment of puberty is the deciding factor, is perhaps responsible for that Peter Pan-like quality among young people in England and the United States which combines the charm of youthful freshness with (here and there) a certain vapid immaturity,

From time to time, in some individual case, genius breaks through the restrictive influence. Parental care may watch over the first tender shoots in a Milton or a Mozart, but the phenomenal growth of the young plant can only be regarded with a helpless and astounded awe. And in such cases of genius the arrival of the twenty-first birthday, though an occasion of sincere rejoicing for friends and kindred, and for the young person himself of some importance from the legal point of view, is but a late stage in a maturity long since attained. What can legal majority signify to one who (like Mozart) has already produced some thirty-one symphonies, two or three operas and nearly three hundred great orchestral works?

Similar reflections must be stimulated by the recent

celebration of the twenty-first birthday of another character of genius who, if he has not yet been recognised by the applause of succeeding generations, has yet in his own generation brought happiness and laughter to millions. He too has won fame by his many symphonies, as sparkling and refreshing, as spontaneous in appeal, as those of his great forbear. In style his compositions, perhaps, resemble those of Haydn rather than Mozart; he characterises them as " silly," thereby summing up their quality of fun and their faculty of relaxing the nervous strain of a troubled age. Such a one is Michael Mouse, Esquire, heretofore known the world over, in his adolescent years, by the affectionate diminutive cognomen of " Mickey."

Born in the closing days of the peaceful year 1927, and early introduced by his proud progenitor, Mr. Walt Disney, to cinematograph audiences in his native land, Mickey exhibited almost at once those qualities of simplicity, *naiveté* and adventurousness which, with his childlike *falsetto* voice, made a direct and immediate appeal to his fellow-countrymen. From the start he showed himself a consummate actor, excelling particularly in the alternating characteristics of pathos and humour which endeared him to children and grown-ups alike. Physical activity and nervous energy, in one of a size so small and a figure so frail, were alike surprising. Nor was his what Milton has called " a fugitive and cloistered virtue "; he sought adventure, courted danger and underwent without flinching hardships which might have sapped the vitality and daunted the courage of many a strong man. His unceasingly cheerful manner was as astonishing as his courage in face of odds and his power to overcome the most stupendous obstacles. Cats and dogs, two species proverbially hostile and even terrifying to him, inspired no fear in him; one and all slunk away, powerless, before his squeaky voice, his agile movements, his ready resourcefulness in every emergency.

Social conditions which held back, and international dangers which deterred, vast numbers of his contemporaries only spurred him to more determined efforts. Though barely two years old at the time, he continued his activities throughout the great American slump of 1929, and the world economic crisis that followed, without interruption. The fulminations of the Führer of a rearmed Germany, the warlike posturings of the Italian Duce, the insidious preparations of the Japanese war-lords, left him profoundly unmoved. He was not disturbed by the war-clouds on the horizon—the invasion of Manchuria, the rape of Abyssina, the conquest of Albania, the annexation of Austria and Czecho-Slovakia. The Dictators stormed; he chattered and laughed, and the world laughed with him.

When the World War started he was barely twelve years old. His tender age did not prevent him from doing important service in keeping up the national morale in those peoples which had not, in keeping with Nazi ideology, rejected " decadent "culture—and, with it, the faculty of laughing at themselves. Two years later the United States entered the War, and he did valuable work in the department of propaganda. Something of his cheerfulness, his ready wit, his dauntless unconcern, was in every young American soldier who withstood the Japanese hordes in Luzon, who built up the bomber force in the United Kingdom and who eventually drove deep into the heart of Germany. Mickey Mouse was for them a national institution, a part of education during their most impressionable years. History may yet declare that the Battle of Bavaria was won on the strip cartoons of Disney.

To-day, in his own particular sphere, Michael has no equal and probably no rival, unless it be in his younger brother, Donald Duck, whose fame is growing but whose appeal is slightly vitiated by a certain quarrelsomeness, moroseness and nervous instability of temper. From all who love laughter—even from the lawyers—greetings will go out to Michael, the pioneer, on his twenty-first birthday, his emergence from tutelage and from adolescence to manhood. The full flowering of his maturity we still look forward to see; remembering that genius is proverbially short-lived our rejoicing cannot be unmixed with anxiety. Let it therefore be permitted, in recognising the Mozartian genius of his early years, to wish him the long life and artistic survival of a Haydn—a joy to his contemporaries and a living example to his successors.

A. L. P.

NEW YEAR LEGAL HONOURS

KNIGHTS BACHELOR

Mr. Bronson James Albery. Called by the Inner Temple, 1904.

Mr. Walter Dwyer, formerly President of the State of Western Australia Arbitration Court.

Mr. Cecil Furness-Smith, K.C., Chief Justice of Trinidad and Tobago. Called by the Inner Temple, 1922, and took silk (Tanganyika) in 1940.

Mr. William Alan Gillett, President of The Law Society. Admitted 1902.

The Hon. Robert Kennedy, Senior Puisne Judge, Supreme Court of New Zealand.

Mr. Leslie Ernest Vivian M'Carthy, lately Puisne Judge, Gold Coast. Called by Gray's Inn, 1911.

Mr. Anthony Frederick Ingham Pickford, Town Clerk of the City of London. Admitted 1907.

Professor Sydney Alfred Smith, C.B.E., Dean of the Faculty of Medicine and Regius Professor of Forensic Medicine, University of Edinburgh, and Editor of Taylor's Principles and Practice of Medical Jurisprudence.

ORDER OF THE BATH

K.C.B.

Mr. Frederick William Metcalfe, C.B., Clerk of the House of Commons. Admitted 1913.

C.B.

Mr. George Phillips Coldstream, Deputy Clerk of the Crown in Chancery, Lord Chancellor's Department. Called by Lincoln's Inn, 1930.

Brevet-Colonel Ernest Edward Green, C.V.O., Chairman, Territorial and Auxiliary Forces Association of the County of Glamorgan. Admitted 1906.

Mr. John Cecil Glossop Pownall, Chief Charity Commissioner. Called by Lincoln's Inn, 1915.

ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

The Hon. Sir John Patrick Dwyer, Chief Justice, Supreme Court of the State of Western Australia.

Mr. Kenneth Owen Roberts-Wray, C.M.G., Legal Adviser to the Secretary of State for the Colonies. Called by the Middle Temple, 1924.

ORDER OF THE BRITISH EMPIRE

K.B.E.

Mr. Arthur Telford Donnelly, Crown Solicitor, Christchurch, N.Z.

Sir Michael Francis Joseph McDonnell, Chairman, English Division of the Appellate Tribunal for Conscientious Objectors. Called by the Inner Temple, 1908.

Mr. Bernard Kerr White, Chief Registrar of Friendly Societies and Industrial Assurance Commissioner. Called by Lincoln's Inn, 1913.

C.B.E.

Major Kenneth Macdonald Beaumont, D.S.O., British Representative, Legal Committee, International Civil Aviation Organisation, Montreal. Admitted 1910.

Mr. Joseph Trounsell Gilbert, O.B.E., Attorney-General, Bermuda. Called by Lincoln's Inn, 1914.

Mr. Arthur Green, M.C., Assistant Solicitor, Ministry of National Insurance. Called by the Middle Temple, 1922.

Mr. John William McKillop, lately County Clerk of Inverness-shire. Admitted 1923.

Mr. William Bentley Purchase, M.C., H.M. Coroner for the Northern District of London. Called by the Inner Temple, 1919.

Mr. Hubert Gordon Thornley, O.B.E., Chairman, Society of Clerks of the Peace; Clerk of the North Riding of Yorkshire County Council. Admitted 1906.

O.B.E.

Major Reginald Bullin, Chairman, Portsmouth and Gosport Local Employment Committee. Admitted 1901.

Mr. Horace John Carr, Principal Clerk, Bankruptcy Department, Supreme Court of Judicature.

Captain Hugh Percival Ross Foster, Legal Assistant, Imperial War Graves Commission. Called by Lincoln's Inn, 1912.

Mr. Eric Euerby King, Town Clerk of West Ham. For services to town planning. Admitted 1924.

Mr. Arthur George Mears, Chief Administrative Officer Office of the Public Trustee. Admitted 1911.

Alderman Vincent Thompson, Chairman, Exeter Savings Committee. Admitted 1896.

Notes from the County Courts

THE TENANT AND HIS FAMILY

THE landlord who asserts that alternative accommodation is available to his statutory tenant must satisfy the court, *inter alia*, that such accommodation is "reasonably suitable to the needs of the tenant and his family as regards extent and character." On almost any day, in almost any county court, one might expect to hear a case turning upon the issue of the suitability of the alternative accommodation. Such cases are second only to the "greater hardship" cases in frequency. Yet no court of authority has yet been called upon to say what the word "family" means. There are two questions which may sooner or later have to be decided. First, what is the relationship necessary to constitute a person a member of the tenant's "family"? To this there are many possible answers. At one end of the scale, as the learned editors of *Law Notes* suggest, "family" may extend to "all usual members of the household. Just possibly, indeed, lodgers as such might be included." On the other hand there would be no absurdity in confining "family" to the spouse and children of the tenant. But whatever the proper test of relationship, a second question is this: Can a person, sufficiently related to the tenant, be regarded as a member of the family for this purpose only if he is continuously and permanently resident in the tenant's house, or, if not, what is the proper test in this regard? It might be, for example, that a son or daughter of the tenant, in the habit of paying regular visits for one or two week-ends in every month, could properly be regarded as a member of the family for whom sufficient space must be provided in the alternative accommodation.

The latter of these two questions is seen in a curious light in *Dinnis* v. *Woodhall*, recently decided in the Burton-on-Trent County Court. The plaintiffs, husband and wife, became landlords of the house of which they now claimed possession during the tenancy of the defendant. In June, 1948, requiring the house for their own occupation, they gave the defendant notice to quit. They thereupon offered to the defendant as alternative accommodation part of the dwelling-house claimed. As the judge subsequently found, the accommodation so offered satisfied the statutory requirements of reasonable suitability to the needs of the tenant in the circumstances then prevailing. But the defendant refused the offer. The action for possession was commenced on the 6th September and was heard upon the 18th October. But before the hearing date arrived the defendant had taken a sick brother to live with him in the house. The learned judge said, in dealing with this aspect of the facts: "It was said, and I am prepared to accept this as accurate, that this arrangement was forced upon the defendant in consequence of the brother's health, and that the arrangement so made was intended to be merely a temporary residence for the brother."

The way in which the learned county court judge approached the problem raised by these facts is seen in the following passage from the judgment.

"The existence and availability of reasonably suitable alternative accommodation may be, and often is, the only source of the court's power to evict the tenant. If that is the position, does it make any difference if the landlord proves that the court would have had power to make an order, if the tenant had not before the case could be heard unreasonably refused to accept suitable alternative accommodation or otherwise rendered reasonably suitable alternative accommodation unavailable? I find it necessary to decide that proof of this fact makes no difference; if the court has no power it matters nothing that it lost such power or never got it through the wrongful or unreasonable or even malicious acts of the tenant. I have not to decide the question, which may some day have to be decided: Does the breach by the tenant of his duty, if possible, to vacate the dwelling-house, which destroys the landlord's claim for possession, nevertheless entitle him to damage?"

"I have now to consider whether on the undisputed facts of this case the court has power to make an order for the recovery by the plaintiffs of the dwelling-house claimed. Unless on those facts such power exists it is fruitless to inquire whether, if it did, such an order would be reasonable to make. The claim is founded upon an offer by the plaintiffs of alternative accommodation reasonably suitable to Mr. Woodhall's needs. That offer was made after the expiration of the notice to quit and before the commencement of this action. When it was made it took the form of an offer to let as a separate dwelling-house part of the house now occupied by Mr. Woodhall. When the offer was made Mr. Woodhall refused it on the ground that the part of the house offered to him as a separate dwelling was not reasonably suitable to his needs having regard to its character and extent. Mr. Woodhall's objection, though not entirely based upon this view, was largely on account of his desire as an official of a local authority to live in a dwelling-house suitable to his official standing and large enough to enable him to entertain visitors, officials or representatives of other authorities or Government departments. The use of a dwelling-house for this purpose is professional use, not residential use. And a dwelling-house, if suitable to the needs of the tenant as alternative residential accommodation, is not unsuitable to the tenant's needs because it is unsuitable for professional use (*Middlesex C.C.* v. *Hall* [1929] 2 K.B. 110, and *Briddon* v. *George* (1946), 174 L.T. 380). The house then occupied by Mr. Woodhall afforded dwelling accommodation in excess of his needs and the part of that house he refused to accept as alternative accommodation was, in my judgment, then reasonably suitable alternative accommodation within the statutory description thereof. Part of a house may constitute reasonably suitable alternative accommodation for a tenant holding the whole house which exceeds his dwelling-house requirements (*Thompson* v. *Rolls* [1926] 2 K.B. 426; *Thomas* v. *Evans* (1927), *Estates Gazette Digest*, p. 83).

"I am therefore of opinion that if the plaintiffs' claim in this action had been heard immediately after Mr. Woodhall had refused that offer and it had remained available for his acceptance, I should have had power, had I thought it reasonable, to make an order for the recovery by the plaintiffs of the dwelling-house claimed. Whether I should have regarded it as reasonable to make such order and upon what terms such order would be reasonable, I have not considered because I have not heard all the relevant evidence. The serious feature of the present position is that, having as I think unjustifiably refused reasonably suitable alternative accommodation, Mr. Woodhall's circumstances were afterwards altered by his taking his invalid brother to live with him. Even assuming that this was due to causes beyond Mr. Woodhall's control, it cannot be denied that what afterwards happened has rendered it now impossible for the plaintiffs to satisfy the conditions precedent to the court's power to evict Mr. Woodhall. For the reasons I have explained I find myself now bound to decide that I have no power to make what in all the circumstances looks likely to be proved to be a reasonable order. All I can decide and do decide with considerable regret is that the plaintiffs' action fails. . ."

There is no doubt, of course, that the appropriate date when it must appear that suitable alternative accommodation will be available, is the date when the order for possession will take effect. And it is equally clear that to hold a landlord entitled to possession on the ground that the tenant, at some date before the hearing, has refused an offer of suitable alternative accommodation which, at the date of the hearing, is no longer available, would be in contravention of both the spirit and the letter of the statutory provisions. But these conclusions do not touch the question of the proper construction to be put on "the needs of the tenant and his family." It is submitted, with respect, that it would be quite erroneous to hold that every relative temporarily resident under the tenant's roof at the date of the hearing must necessarily be provided for.

No doubt, in the present case, the learned judge was satisfied that the brother's residence was *bona fide*. But what precisely are the requirements of *bona fides* in such a case? It is a figure of speech to speak of any householder being "forced" to take a relative to live with him. No matter how strong the moral obligation, the ultimate choice is free, and whenever the new member of the "family" makes his appearance after proceedings for possession are commenced or anticipated, it may be hard to say that the tenant's gesture of hospitality was quite uninfluenced by any desire to swell the "needs of his family." It may be that the way out of these difficulties—the law's resort whenever it is in a tight corner—is to say that the proper test is one of reasonableness. It seems that the choice lies between this evasion or a rule of thumb test, which only an amending statute could provide.

It will be remembered that under the Act of 1920 the "member of the tenant's family residing with him at the time of his death," who might in certain circumstances succeed to the privileges of the statutory tenancy, was an equally vague entity. But the Act of 1933 added the qualification of a minimum of six months' residence before the death of the tenant.

N. C. B.

SURVEY OF THE WEEK

1. *Statutes*

Civil Defence Act, 1948 (12 & 13 Geo. 6, c. 5)

This Act, which is expressed "to make further provision for civil defence" is a short one but is drawn in wide terms and deals principally with the functions of a Minister or Ministers, to be designated by Order in Council, for the purpose of carrying out the provisions of the Act, and with the functions of local authorities and police authorities in civil defence matters. It is declared that policemen, firemen and other employees of local authorities, although not primarily employed for civil defence purposes, shall be under an obligation to train in civil defence and do civil defence work. The Minister is to organise, train and equip civil defence services and police forces and fire brigades so far as the last two carry out civil defence functions. He is to instruct the public in civil defence and to carry out any constructional work which may be required. The local authorities and police authorities may be empowered by regulations issued under the Act to appoint committees to carry out their civil defence functions. If these authorities do not carry out their duties the Minister may be authorised to carry out those duties himself or require some other authority to do so and in either case charge the authority with the resulting expense. They may be authorised to carry out building, mining or other operations, or the making of any material change in the use of any buildings or other land "in contravention of or without compliance with any statutory provision regulating or restricting the carrying out" thereof—a reference to the new development law. The Treasury will make grants to the authorities towards the expense of carrying out their civil defence functions. The Minister or local authority may acquire compulsorily any land required for these functions, and the Minister, the local authority or the police authority have a right of entry to inspect land in order to decide whether it, or any other land, should be used for civil defence purposes. If the land is occupied, twenty-four hours' notice is to be given. It is made an offence for anyone, so inspecting land, to make use of information so gained with regard to any manufacturing process or trade secret, except in the performance of his duty.

Recall of Army and Air Force Pensioners Act, 1948 (12 & 13 Geo. 6, c. 8)

This Act applies to pensioners (other than those receiving *disability* pensions), whose pensions were assessed or re-assessed in accordance with pension provisions made after 16th December, 1948, other than those whose pensions were granted before 3rd September, 1939, and certain other types of pensioners. They may be recalled whenever the army or air force reserve are, or are deemed to be, called out on permanent service. Not less than three days' notice will be given, and the service pension will continue in addition to service pay. The Act also applies to those whose pensions have been commuted for a sum of money.

Prize Act, 1948 (12 & 13 Geo. 6, c. 9)

Provision is made in this Act for the payment of £4,000,000 to the Royal Naval Prize Fund and thence to individual sailors and marines, or their representatives if deceased. The sum of £1,250,000 is to be paid to the Royal Air Force Prize Fund, and thence, not to individuals, but to air force charitable and welfare organisations. Unclaimed sums in the Supreme Court Prize Deposit Account, or in colonial prize courts, will be advertised in newspapers as determined by the President of the Probate, Divorce and Admiralty Division or judge of the prize court concerned, and if not claimed will be paid into the Exchequer. The royal prerogative rights to grant prize money and prize bounty are abolished.

Expiring Laws Continuance Act, 1948 (12 & 13 Geo. 6, c. 3)

The following Acts are extended till 31st December, 1949, viz.: Wireless and Telegraphy Act, 1904; Population (Statistics) Act, 1938; Prevention of Violence (Temporary Provisions) Act, 1939; Education (Exemptions) (Scotland) Act, 1947; s. 1 of the Aliens Restriction (Amendment) Act, 1919; and ss. 1 and 2 of the Cotton Manufacturing Industry (Temporary Provisions) Act, 1934, are similarly extended. The following Acts are extended to 31st March, 1950, viz.: Rent of Furnished Houses Control (Scotland) Act, 1943, and the Furnished Houses (Rent Control) Act, 1946.

2. *Statutory Instruments*

Agriculture (Procedure of Agricultural Land Tribunals) (No. 2) Order, 1948 (S.I. 1948 No. 2751)

This Order came into operation on 1st January, 1949, and makes an alteration in the procedure of Agricultural Land Tribunals as laid down in the Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948 (S.I. 1948 No. 186). The principal Order laid down that there should be only two parties to a reference of a matter to the Tribunal, namely, the person who applied for the reference and the Minister of Agriculture and Fisheries. It has been found that such references often affect others who should become parties, as for example a matter might be decided by the Minister in a way favourably affecting a tenant but unfavourably affecting his landlord. In such case the landlord would appeal and the successful tenant could also now become a party to the reference. The Secretary of the Committee who is required to refer a matter to the Tribunal is now to serve the relevant documents, not only on the applicant, but also on anyone else who availed himself of the opportunity of making representations to the Minister under the provisions of the Agriculture Act, 1947. He is also to send such person a copy (or give him an opportunity of seeing and taking copies) of any statement made by the applicant and of any documents served on the Secretary by the applicant. The Chairman of the Tribunal will now also send a notice of the hearing to the interested person or persons.

National Insurance (Compensation) Regulations, 1948 (S.I. 1948 No. 2729)

These regulations affect employees of approved societies, and of bodies administering the affairs of approved societies, and of bodies administering special schemes under s. 73 of the Unemployment Insurance Act, 1935. They make provision for payment of compensation to such persons for loss of employment or loss or diminution of emoluments or pension rights due to the passing of the National Insurance Act, 1946. The period of qualifying employment is defined; a time limit is to be laid down for the making of claims. Provision is made to deal with employees who have been on war service during the qualifying period. The Minister's decision as to the amount of compensation is made subject to review by the Minister himself or by a tribunal.

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations, 1948 (S.I. 1948 No. 2723)

This instrument amends the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations, 1948 (S.I. 1948 No. 1371). Where disablement benefit is not preceded by injury benefit, the date of development is substituted for the end of the injury benefit, and reference to the "effects of the relevant injury" is extended to include the "effects of the relevant disease." Pneumoconiosis sufferers advised by a medical board not to continue their regular occupation except under special restrictions are to be held to be eligible for increase of pension in respect of special hardship. If such sufferers have ceased to follow that restricted occupation the fact that they followed it between the date of development of the disease and the date of the current assessment of their disablement, or for a reasonable period of trial thereafter, is to be disregarded. Disablement benefit in respect of byssinosis is extended to cases where the disease causes loss of faculty likely to be permanent and where the resulting disablement is assessed at not less than 50 per cent. Assessments for byssinosis are not to be made for periods of less than one year.

Isles of Scilly (Local Government) Order, 1948 (S.I. 1948 No. 2733)

This Order modifies the application of the Local Government Act, 1948, as it applies to the Isles of Scilly in a number of respects.

Coal Industry Nationalisation (Satisfaction of Compensation) (No. 2) Regulations, 1948 (S.I. 1948 No. 2772)

This instrument enables compensation to be made by means of a money payment for railway wagons which were under requisition at the date on which they vested in the National Coal Board.

RULES OF THE SUPREME COURT (No. 4), 1948
(S.I. 1948 No. 2781 (L.34))

These rules come into force on 10th January, 1949. They make minor amendments to Ord. 7, r. 2, to Ord. 65, r. 27, and to r. 13A of the R.S.C. (Criminal Proceedings), 1938, and considerable changes in Ord. 36 affecting trials at Liverpool or Manchester. A new r. 29A is inserted requiring the district registrars at those places to keep " Jury Lists " and " Non-Jury Lists " in which causes are to be entered for trial, and to fix a date before which the cause or matter shall not be tried unless the judge going the circuit otherwise orders. All the parties are placed under a duty to give the district registrar without delay any information relating to a settlement or the likelihood thereof, or affecting the estimated length of the trial. Not less than seven clear days before commission day the registrar is required to publish a list of causes and matters likely to be tried during the first week of the Assizes, but any party may thereupon apply to the district registrar for postponement of the trial. These arrangements do not apply to causes or matters for trial at Liverpool or Manchester for which notice of trial has been given for the Winter Assizes, 1949.

CLAIMS FOR DEPRECIATION OF LAND VALUES (PERIOD FOR MAKING CLAIMS) REGULATIONS, 1948 (S.I. 1948 No. 2822)

These regulations formally effect the extension (noted at p. 2, *ante*) from 31st March, 1949, to 30th June, 1949, of the period within which claims may be made on the £300,000,000 compensation fund under s. 58 of the Town and Country Planning Act, 1947, and revoke the power of the Central Land Board to grant an extension in particular cases up to the latter date.

BRITISH NATIONALITY REGULATIONS, 1948 (S.I. 1948 No. 2721)

These regulations came into force on 1st January, 1949, and prescribe the various forms of application under the British Nationality Act, 1948, for registration as a citizen of the United Kingdom and Colonies, for the granting of a certificate of naturalisation, and for declarations of intention to resume British nationality or of renunciation of citizenship, etc. The regulations also prescribe the fees payable under the Act.

RATING AND VALUATION ACT (PRODUCT OF RATES AND PRECEPTS) AMENDMENT RULES, 1948 (S.I. 1948 No. 2713)

These rules, which came into force on 1st January, 1949, amend the definition of " gross rate income " in the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1938.

BOOKS RECEIVED

Introducing the Agriculture Act, 1947, and the Agricultural Holdings Act, 1948. By J. GORDON STANIER, LL.B., Solicitor. 1948. pp. xiii and (with Index) 54. London: The Law Society. 2s. 6d. net, to members; 3s. 6d. net, to non-members.

Final Legal Fictions. By A. LAURENCE POLAK, B.A., Solicitor of the Supreme Court. Illustrated by DIANA PULLINGER. 1948. pp. (with Index) 117. London: Stevens & Sons, Ltd. 6s. net.

Oyez Practice Notes, No. 11: Agricultural Holdings. By R. BORREGAARD, M.A., of the Inner Temple, Barrister-at-Law. 1948. pp. 88. London: The Solicitors' Law Stationery Society, Ltd. 6s. net.

The Finance Act, 1948. Reprinted from Butterworth's Annotated Legislation Service. By WILLIAM LINDSAY, M.A., of the Inner Temple, Barrister-at-Law. 1948. pp. v and (with Index) 176. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Dr. Johnson and the Law. By Sir ARNOLD MCNAIR, K.C. 1948. pp. xi and (with Index) 115. Cambridge: Cambridge University Press. 7s. 6d. net.

The Lloyd George I Knew. Some Side-lights on a Great Career. By Sir ALFRED T. DAVIES, K.B.E., C.B., Permanent Secretary to the Welsh Department. 1948. pp. (with Index) 146. London: Henry E. Walter, Ltd. 10s. 6d. net.

The Lawyer's Companion and Diary, 1949. One Hundred and Third Year of Publication. Pt. I by ERNEST L. BUCK. Pt. II by LESLIE C. E. TURNER. 1948. pp. (with Index) xxiii and 971. London: Stevens & Sons, Ltd.; Shaw & Sons, Ltd. 18s. 9d. net.

Shawcross on the Law of Motor Insurance. Second Edition. by CHRISTOPHER SHAWCROSS, of Gray's Inn and the Midland Circuit, Barrister-at-Law, and MICHAEL LEE, of the Middle Temple, Barrister-at-Law. 1948. pp. lxxxix, 752 and (Index) 92. London: Butterworth & Co. (Publishers), Ltd. 75s. net.

The Transport Act, 1947, as it affects Road Transport. By G. W. QUICK SMITH, LL.B. (Lond.), of the Inner Temple, Barrister-at-Law. 1948. pp. xvi and (with Index) 351. Leigh-on-Sea: The Thames Bank Publishing Co., Ltd. 25s. net.

The Criminal Justice Act, 1948. Annotated by A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts, and EDWARD HUGHES, Senior Chief Clerk of the Metropolitan Magistrates' Courts. 1948. pp. iv, 179 and (Index) 24. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

The Law of Carriage by Inland Transport. By OTTO KAHN-FREUND, LL.M., Dr. Jur., of the Middle Temple, Barrister-at-Law. Reader in Law, University of London. Second Edition. 1949. pp. xxv and (with Index) 357. London: Stevens and Sons, Ltd. 17s. 6d. net.

An Introduction to Criminal Law. Second Edition. By RUPERT CROSS, M.A., B.C.L., Solicitor, Fellow of Magdalen College, Oxford, and P. ASTERLEY JONES, LL.B., M.P., Solicitor, Tutor at The Law Society's School of Law. 1949. pp. xlviii and (with Index) 340. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

Notes on Banking Cases, 1787-1948. By FRANK D. JOHNSON, Associate of the Institute of Bankers. 1949. pp. xii and (with Index) 123. London: Macdonald & Evans. 6s. net.

Supplement to Hill and Kerrigan on the Town and Country Planning Act, 1947. By D. P. KERRIGAN, B.L. (Edin.), of the Middle Temple, Barrister-at-Law. 1949. pp. viii and (with Index) 231. London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Legal Aid Centres

Sir,—Much has been said and written regarding the giving of oral advice only, in future legal aid centres, and of the unnecessary trouble and expense which would be involved to staff such centres, should letters be written and negotiations carried out, but what of the staff at present employed by such centres? Surely it will be superfluous to disband the centres at present carrying out such work and dismiss staff who have extensive knowledge of legal aid procedure, while staff employed by solicitors in private practice will have to adapt themselves to an entirely new type of litigation. Surely centres as such should be allowed to carry on?

(Mrs.) GRACE SHEPPARD.

London, S.E.22.

Land Registry to go to Durham

Sir,—We refer to the paragraph under the above heading which appeared in THE SOLICITORS' JOURNAL of 18th December last, and we wish to draw attention to one particular instance of difficulty which the removal of the Land Registry from London will accentuate.

The difficulty which we have in mind is one that faces a mortgagor's solicitor when instructed to prepare urgently a draft contract for the sale of a registered property, assuming that he is not fortunate enough to act also for the mortgagee. The alternative courses open to a solicitor in these circumstances are either to bespeak a photographic office copy of the register or to prepare his own copy by making a personal search of the register. We understand that the former course is the one preferred by the Land Registry but we usually find that it takes seven to ten days to obtain a copy by this means, whereas, by adopting the latter course, a copy may be obtained within an hour or so.

We suggest, therefore, that, on the removal of the Registry to Durham, it will become of prime importance for the Registry to make arrangements for office copies to be issued by return of post, and we further suggest that such arrangements, if put into force now, would be to the advantage of the Registry, the profession and the public.

J. A. PHILLIPS & Co.

Southall, Middx.

NOTES OF CASES

HOUSE OF LORDS

CHARTERPARTY: TIME FOR PAYING HIRE

Tankexpress A/S *v.* Compagnie Financiere Belge des Petroles

Lord Porter, Lord Wright, Lord Uthwatt, Lord du Parcq and Lord Morton of Henryton. 9th November, 1948

Appeal from the Court of Appeal.

The appellants let their tanker, the *Petrofina*, to the respondents in 1937. In September, 1939, owing to the outbreak of war, questions arose between the owners and the charterers as to the voyage then intended, and in consequence of various acts and circumstances the vessel was not at any time before 30th September, 1939, placed at the charterers' disposal for loading. Hire became due under the charterparty on 27th September in advance for October. The method of payment adopted had been for the charterers to pay hire in London by sending a cheque drawn on their bank to a bank in London which placed it to the credit of the shipowners at their bank at Oslo. On 25th September, 1939, the charterers sent a cheque for the hire due on the 27th to London, but, owing to war-time delays in the post, it did not arrive until 3rd October. On 30th September the shipowners telegraphed to the charterers that they regarded the charterparty as cancelled because of non-receipt of hire. The Court of Appeal affirmed Atkinson, J.'s, decision in favour of the charterers on a special case stated by an arbitrator, and the shipowners now appealed. The House took time for consideration.

LORD PORTER—the other noble lords agreeing in dismissing the appeal—said that the charterers argued that as they had paid in the usual and recognised manner they were not in default and consequently no right of withdrawal arose; and that even if they were in default the shipowners were not entitled to withdraw the services of the ship when they were themselves in default by withholding the services of the ship (owing to the questions which had arisen between the parties as to the next voyage). The shipowners were not entitled by any provision in the charterparty to withhold the services of the ship after the settlement of the dispute on 25th September; but that would only absolve the charterers from the duty to pay advance hire on the 27th, if the obligations of providing the ship and paying the hire were mutually inter-dependent, a question which he (his lordship) did not think it necessary to decide. Nor did he decide whether the shipowners were precluded from withdrawing the ship while they were themselves in default or whether they were entitled to sue for the hire as soon as the due date had arrived. It was not necessary, to constitute a default under that charterparty, that the failure to make due payment of the hire should be due to deliberate non-performance or to negligence. If payment on due date was required and was not excused by special circumstances, payment a day or two late was not timeous enough, and *Nova Scotia Steel Co., Ltd.* v. *Sutherland Steam Shipping Co., Ltd.* (1899), 5 Com. Cas. 106, was wrongly decided on that point. The charterers were, however, entitled to succeed here because the true inference to be drawn from the facts was that the method of performance of the contract was varied by an arrangement for payment by cheque posted at such time as would in the ordinary course of post reach the bank in London on the 27th of the month. The shipowners were not entitled suddenly to vary the accepted method of payment without first notifying the charterers in time to enable them to comply with the shipowners' demand. Appeal dismissed.

APPEARANCES: *Le Quesne*, K.C., and *Ashton Roskill* (*Sinclair, Roche & Temperley*); *Sir William McNair*, K.C., and *Eustace Roskill* (*Ince & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

PERSONAL INJURIES: REDUCTION OF DAMAGES

Greenham *v.* Tecalemit, Ltd.

Bucknill, Singleton and Denning, L.JJ.
8th November, 1948

Appeal from Atkinson, J.

The defendant employers admitted liability under the Factories Act, 1937, for injuries suffered by the plaintiff, a capstan-lathe operator employed by them. The injury was to the tip of her left thumb, which, in the result, was left a quarter of an inch shorter than it had been. The wound healed satisfactorily, and the plaintiff was within three weeks back at work, which she was able to perform as well as before. The thumb was now still painful if knocked in a certain way. A portion of its terminal phalange was missing, and the remaining portion required rounding off. Apart from general tenderness, the condition of the thumb handicapped her sewing activities, and she no longer made her own clothes. The thumb was somewhat unsightly. Atkinson, J., awarded her £750 damages. The employers appealed on damages only.

BUCKNILL, L.J.—SINGLETON and DENNING, L.JJ., agreeing—said that before the court interfered with an award of damages by a judge it must be satisfied that he had acted on a wrong principle of law, or had misapprehended the facts, and had for those reasons made a wholly erroneous estimate of the damages: see *Flint* v. *Lovell* [1935] 1 K.B. 354, at p. 360, and *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* [1942] A.C. 601, at pp. 616–7. The estimate made here was, in the opinion of the court, wholly erroneous. Damages reduced to £350.

APPEARANCES: *Norman Richards* (*Pattinson & Brewer*); *Marven Everett* (*W. H. Thompson*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LOSS OF OFFICE: CLAIMANT'S REFUSAL TO DIVULGE TOTAL INCOME

Langham *v.* London Corporation

Tucker and Cohen, L.JJ., and Birkett, J.
18th November, 1948

Appeal from the Mayor's and City of London Court.

The plaintiff was a solicitor holding the office of clerk to the Commissioners of Tithes of the Rector's Stipend, St. Andrews, Holborn, at an annual remuneration of £75. The City of London (Tithes) Act, 1947, extinguished tithes and tithe rates in the city. By s. 16 (1), "every officer . . . who suffers substantial detriment to his livelihood by reason of the passing of this Act shall be entitled to compensation from the corporation for that detriment." By s. 16 (2) a claimant has to state in writing the facts and circumstances supporting his claim. In order to ascertain whether the plaintiff had suffered substantial detriment to his livelihood the corporation required him to disclose, among other matters, his total income. He refused to divulge it, and the corporation rejected his claim. The plaintiff appealed to the Mayor's Court, where the preliminary question was argued whether the words "substantial detriment to his livelihood" meant substantial in relation to a claimant's whole income or referred only to the amount of the emolument of which he had been deprived. The plaintiff's claim was treated as a test case, and the judge decided in his favour. The corporation appealed. (*Cur. adv. vult.*)

BIRKETT, J.—TUCKER and COHEN, L.JJ., agreeing—said that the benefit of any doubt of construction must be given to those who might be prejudiced by exercise of the powers which the statute conferred. It was unlikely that compensation was to be dependent on the income of the claimant. To make it so would be to introduce a means test of a most unusual kind and necessitate writing the words "having regard to his financial position" into the subsection. The question for the corporation was whether the loss suffered by a claimant was in ordinary language a thing of substance as distinct from a trivial loss. That question could well be determined without knowledge of a claimant's total income. Compensation should not depend on whether a claimant was rich or poor. Appeal dismissed.

APPEARANCES: *Fox-Andrews*, K.C., and *Heathcote-Williams* (*Comptroller and City Solicitor*); *Capewell*, K.C., and *L. A. Blundell* (*Sharpe, Pritchard & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RATING: BUILDING CONTRACTORS' HUTS, ETC.

John Laing & Son, Ltd. *v.* Kingswood Assessment Committee and Others

Tucker and Asquith, L.JJ., and Jenkins, J.
20th December, 1948

Appeal from the Divisional Court, 64 T.L.R. 407.

The appellants, a company of building contractors, contracted with the Air Ministry to execute extensive works connected with the construction of an airfield. For the purpose of the work they erected on the land buildings as offices and canteens for their workmen, also storage huts and concrete emplacements for heavy constructional machinery. The contract provided that all those buildings were to be removed on completion of the work unless retained by the Ministry for their own use, and that the Ministry might direct the removal of any of them at any time while the work was in progress. The rating authority proposed to add to their valuation list all the abovementioned buildings and works, and the assessment committee accepted that proposal.

On a case stated by quarter sessions, the Divisional Court held that the occupation of the land by the company's works was beneficial and confirmed the assessment. The contractors appealed.

TUCKER, L.J.—ASQUITH, L.J., and JENKINS, J., agreeing—said that the argument on appeal had turned on the question whether the company's occupation of the hereditaments was paramount, whereas in the Divisional Court the decision had turned on the question of beneficial occupation. The question now was whether the very extensive powers conferred by the contract on the superintendent officer of the Air Ministry were such that the company could not be regarded as in exclusive occupation of those hereditaments. The principles applicable were laid down in *Westminster Corporation* v. *Southern Railway Co.* [1936] A.C. 511. His (his lordship's) view of the contract was that the Air Ministry did not, in the present case, exercise such a degree of control as would render the occupation of the company one which was not rateable. The real control exercised by the Ministry concerned the performance of the contract and did not interfere with the exclusive occupation of the hereditaments by the company for the purposes of their work. The company were rightly rated. Appeal dismissed.

APPEARANCES: *Harold Williams*, K.C., and *Stewart-Brown* (*R. L. Mason*); *Rowe*, K.C., and *Squibb* (*Field, Roscoe & Co.*, for *Crossman & Co.*, Thornbury, and *Guy H. Davis*, Gloucester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

CHANCERY DIVISION

COMPANY: ARTICLE OF ASSOCIATION IN BREACH OF COMPANIES ACT, 1929: TRANSFER

_In re_ Greene deceased; Greene _v._ Greene

Harman, J. 7th December, 1948

Adjourned summons.

C. A. Greene died intestate on 20th January, 1945, leaving a widow, his second wife, and three children, two by his first wife. He was the registered holder of 950 shares in F.G. & Co., Ltd., a private company formed in 1934 to take over a business in which he was a partner. The articles of the company adopted Table A of the Companies Act, 1929. Special articles provided that the company was not bound to recognise any equitable interest in shares, and gave members of the company prior rights of purchasing shares which any member wished to transfer. By cl. 20 of Table A the legal personal representatives of a deceased shareholder are the only persons recognised by the company as having any legal title to the share. In August, 1942, a special resolution was passed at an extraordinary general meeting of the company that the articles should be altered to provide that in the event of any director of the then board, which included Greene, dying and leaving a wife surviving him, his shares should, notwithstanding any direction made by him in his lifetime, be deemed to have passed on his death to his wife, who should be registered as the holder in his place. On 15th February, 1945, the board passed a resolution that the first defendant, the widow, should be registered forthwith as the holder of her husband's shares. The question raised was whether this resolution was valid and effective to create a transfer. (*Cur. adv. vult.*)

HARMAN, J., said that the new article was contrary to s. 63 of the Companies Act, 1929. The registration of the widow was wrong and the register must be rectified and the shares registered in the joint names of the personal representatives. But the widow claimed that as between herself and other beneficiaries and apart from the company she was entitled to the shares, either (1) by way of gift, or (2) under a trust in her favour, or (3) under a contract between the members of the company. There was no gift; the marriage might have come to an end and the intestate married some other person. For similar reasons there was no trust declared in favour of the widow; the shares were in no way bound during the intestate's lifetime. Any contract could only be enforced by or through the company, and an article *ultra vires* the company could not be so enforced. There was no contract between the intestate and the other directors, and if there were the widow was not a party to it. The alteration in the article was quite ineffective, and the court could not invent a contract which no one had a mind to make. The cases of *In re Flavell* (1883), 25 Ch. D. 89 and *In re Davies* [1892] 3 Ch. 63 had no application. The shares formed part of the intestate's estate and would devolve accordingly.

APPEARANCES: *Harold Lightman, G. M. Parbury, E. J. Bagshawe* (*Tucker, Turner & Co.*); *I. J. Lindner* (*Davidson, Doughty & Co.*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

BUILDING CONTRACT: REASONABLE PROFIT

Sir Lindsay Parkinson & Co., Ltd. _v._ Commissioners of Works and Public Buildings

Lewis, J. 29th October, 1948

Special Case Stated by an arbitrator.

The claimant company entered into a contract with the respondent Commissioners for the erection of an ordnance factory by 30th January, 1939, for a specified sum. Owing to various changes of circumstances, a supplementary contract was entered into, provision being made for increased expenditure and for a maximum profit of £300,000 to the contractors. When the work was completed the cost proved to have been greatly in excess of estimates, and the Commissioners accordingly paid to the contractors the increased cost to them plus the agreed £300,000. The contractors contended that when the supplementary contract providing, *inter alia*, for the £300,000 maximum profit was entered into it was not contemplated that the cost of the work would be as great as it turned out to be, and that they were accordingly entitled to be paid an extra sum for profit calculated on the actual excess cost to the contractors. The arbitrator found that it was a custom of the building industry to relate profit remuneration to the actual cost of the work and the time taken to execute it and, subject to questions left to the court, awarded that the contractors were entitled to an additional £90,298. (*Cur. adv. vult.*)

LEWIS, J., said that the contractors were entitled, on the true construction of the contract as varied, to be paid a proportionate or reasonable profit in respect of the excess work. Alternatively, they were entitled to be paid on the basis of a *quantum meruit* for excess work not coming within that originally contracted for. At the time of the varied contract it was never contemplated between the parties that there should be such an increase—some £2,000,000—in the cost of the work as had in fact occurred. The case was within the decisions in *Bush* v. *Whitehaven, etc., Trustees* (1888), 52 J.P. 392, and *Jackson* v. *Union Marine Insurance Coy., Ltd.* (1874), L.R. 10 C.P. 125. Judgment for the contractors.

APPEARANCES: *Sir Valentine Holmes*, K.C., *Rimmer* and *Stewart-Brown* (*J. H. Lambert & Co.*); *Rewcastle*, K.C., *Dingle Foot* and *Gavin Simonds* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

EVIDENCE: "PERSON INTERESTED"

Evon and Another _v._ Noble

Action. Birkett, J. 11th November, 1948

The infant plaintiff was injured on the premises of the defendant, a chemist, while in charge of a nursemaid employed by the first plaintiff, her father. After issue of the writ in the present action for damages in respect of the injuries, the nursemaid made a written statement about the facts relating to the day and incident in question. At the trial she could not be called as a witness because all reasonable efforts to trace her had failed. Counsel for the plaintiffs applied to have her statement admitted under s. 1 of the Evidence Act, 1938. The defendant opposed the application on the ground that the nursemaid was a "person interested" within the meaning of s. 1 (3), which renders inadmissible a statement made by such a person "at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."

BIRKETT, J., referred to *Bain* v. *Moss Hutchinson Line, Ltd.* (1948), 92 SOL. J. 528; 64 T.L.R. 473, and said that the nursemaid here was in the same position as the tyre-tester in *Barkway* v. *South Wales Transport Co., Ltd.* (1948), 92 SOL. J. 528; 64 T.L.R. 462. Her reputation was in issue because she had been responsible for the care and safety of the injured child at the time of its accident. He rejected the application on that ground rather than on the ground that she was employed by the first plaintiff. Evidence rejected.

APPEARANCES: *T. H. K. Berry* (*H. Flint & Co.*, for *Henry Flint*, Southend); *Flowers*, K.C., and *Webber* (*Sprinz & Sons*, for *Thurlow, Baker & Nolan*, Southend).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

EVASION OF PURCHASE TAX AND CUSTOMS DUTY

Beck _v._ Binks

Lord Goddard, C.J., Hilbery and Birkett, JJ. 25th November, 1948

Case Stated by a metropolitan magistrate.

The appellant was found inland by an officer of H.M. Customs to be carrying in a brief-case 208 Swiss watches on which, to his

knowledge, duty had not been paid. He was accordingly charged with knowingly carrying uncustomed goods with intent to defraud His Majesty of the import duty thereon, contrary to s. 186 of the Customs Consolidation Act, 1876, and with similarly seeking to defraud His Majesty of purchase tax, contrary to s. 11 (1) of the Finance Act, 1944, applying s. 186 of the Act of 1876. The magistrate found the appellant guilty on both charges and sentenced him to a fine and imprisonment in respect of each. The appellant, on his appeal, contended that he was guilty of one offence and not two, and, further, that the offence in question could only be committed by the actual smugglers or importers of the goods or those engaged in carrying the goods from the ship, aircraft or warehouse, etc., at the actual place of importation with the intention of there evading duty or tax.

LORD GODDARD, C.J., said that, as the offence created by s. 186 included being "in any way knowingly concerned in carrying . . . or in any manner dealing with" uncustomed goods "with intent to defraud His Majesty of any duties due thereon," a person knowingly carrying the goods inland was as much assisting in defrauding His Majesty as was the actual smuggler, his acts and those of the smuggler all being part of the same operation. As for the second point, s. 11 (1) of the Act of 1944 put the matter beyond doubt. It showed that purchase tax on imported goods was to be regarded as a customs duty: it simply increased the customs duty. A man who evaded the one duty no doubt evaded the other, but, by the operation of s. 11 (1), he was evading only one thing, namely, customs duty, and was committing only one offence. The sentence on the charge of evading purchase tax must therefore be quashed. The sentence on the first charge stood. Appeal allowed in part.

APPEARANCES: *Serjeant Sullivan*, K.C., and *Baerlein* (*Alfred Kerstein & Co.*); *John Foster* (*Solicitor for Customs and Excise*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

HUSBAND AND WIFE: APPEALS FROM REGISTRAR

Bernbaum *v.* Bernbaum

Barnard, J. 15th November, 1948

Appeal from an order of a registrar made under s. 17 of the Married Women's Property Act, 1882.

When the appeal came on it was argued for the appellant that the judge had no jurisdiction to hear it on the ground that appeal from the registrar lay to the Divisional Court.

BARNARD, J., said that by r. 82 of the Matrimonial Causes Rules, 1947, without prejudice to the jurisdiction conferred on him by R.S.C., Ord. 54, r. 12, "a registrar may exercise all the jurisdiction . . . conferred on a judge of the Supreme Court by s. 17" of the Act of 1882. That rule brought divorce practice into line with that of the King's Bench Division in relation to a master, and reproduced, so far as s. 17 was concerned, Ord. 54, r. 12 (*a*), with substitution of "registrar" for "master." Order 54, r. 22 (*a*), for which there was no equivalent in the Rules of 1947, provided for appeal from a master to the Divisional Court. It was argued that the same provision should be implied in respect of a registrar. In his opinion appeals from a registrar in respect of s. 17 of the Act of 1882 were governed by r. 59 of the Rules of 1947 and lay to a judge in chambers; for the registrar, though armed by r. 82 with the powers of a judge, remained a registrar. Objection overruled.

APPEARANCES: *Seuffert* (*Ferris, Roberts, Thomas & Co.*); *G. L. Hardy* (*J. Clifford Watts*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE: FOREIGN TESTATOR'S ENGLISH WILL

***Re* Goenaga, deceased**

Ormerod, J. 17th November, 1948

Probate motion.

A testator died in August, 1945, domiciled in France. In 1934 he had executed in England a will disposing only of his property in Great Britain and the British Empire, and appointing as his executors an English trustee company. He bequeathed all the property in question equally between all his children. The will was in proper form and duly executed in accordance with English law. It was not disputed that the will was accordingly valid under French law. By the French Civil Code a testator may pass the whole or a part of his property to executors, but their powers last only a year and a day from the date of death. The question raised by the motion was whether the Code Civile was applicable and, if so, whether the powers of the executor company were limited to a year and a day.

ORMEROD, J., said that he accepted the argument for the executors that the *lex domicilii* of the testator governed the formal and material validity of a will but that the powers of an English executor appointed by an English will restricted to property in Great Britain and the Empire were governed by the *lex fori* even though the deceased was domiciled abroad. Probate granted.

APPEARANCES: *Marshall-Reynolds* (*Devonshire & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LEGITIMACY: ALLEGED GESTATION OF 340 DAYS

M-T. *v.* M-T. and Another

Ormerod, J. 17th November, 1948

Issue directed to be tried concerning the paternity of a child.

The plaintiff was the former husband of the first defendant, the second defendant being the Official Solicitor as guardian *ad litem* of the infant concerned. The former husband and the mother were married in 1936. A decree *nisi* was awarded against her in 1947 on the ground of adultery with a man unknown alleged to have taken place in about July, 1942. The child was born on 13th April, 1943, 340 days after the former husband's embarkation, proved by Army records, for a station overseas, where he remained until 1945. In October, 1947, the wife applied for maintenance for the child. The plaintiff disputed paternity, and that issue was now tried. Medical evidence was given by a gynaecologist who had read a report of *Gaskill* v. *Gaskill* [1921] P. 425, and a transcript of the medical evidence in *Hadlum* v. *Hadlum* (1948), 92 SOL. J. 528. The child was normal and weighed $7\frac{3}{4}$ lbs. at birth.

ORMEROD, J., said that, having regard to the gynaecologist's evidence that it was quite impossible for a normal child to be born after so long a period as 340 days and that, had the gynaecologists who gave evidence in *Gaskill* v. *Gaskill, supra*, had the knowledge which had been accumulated since, they would have agreed on that point, he (his lordship) was unable to hold that the infant had been born as the result of *coitus* between the mother and her former husband before his embarkation in May, 1942. The child must accordingly be pronounced illegitimate. Judgment accordingly.

APPEARANCES: *Marshall-Reynolds* (*Vandercom, Stanton & Co.*); *Stuart Horner* (*Official Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. A. AITKEN

Mr. Andrew Aitken, J.P., solicitor, of Glasgow, died on 24th December, 1948. He was admitted in 1902.

MR. W. ANDERSON

Mr. W. Anderson, solicitor, of Inverness, died recently. Mr. Anderson was formerly Procurator-Fiscal.

MR. A. E. CLARKE

Mr. A. E. Clarke, formerly senior partner of Messrs. Garrard, Wolfe & Co., London, S.W.1, died on 24th December, 1948. He was admitted in 1891.

MR. H. HARRISON

Mr. Harold Harrison, solicitor, of Macclesfield, died on 29th December, 1948, aged fifty-six. Mr. Harrison was clerk to the Macclesfield magistrates. He was admitted in 1920.

MR. A. A. HILL

Mr. A. A. Hill, solicitors' clerk, of Wallingford, died recently, aged thirty-three.

MR. W. H. LANGDON

Mr. W. H. Langdon, solicitor, of Hastings, died on 28th December, 1948. He was admitted in 1902.

MR. T. W. MAYO

Mr. T. Worsfold Mayo, solicitor, of Seaton, Devon, died on 27th December, 1948, aged eighty. He was admitted in 1891.

MR. J. C. PERRY

Mr. John Cyril Perry, solicitor, of Messrs. Parson, Lee & Co., London, W.C.1, died on 30th December, aged sixty-one. He was admitted in 1913.

MR. H. W. SAW

Mr. H. W. Saw, solicitor, died at Hampstead on 20th December, 1948, aged eighty-three.

MR. P. SINCLAIR

Mr. P. Sinclair, solicitor, of Wick, died on 18th December, 1948, aged seventy-six. Mr. Sinclair was Procurator-Fiscal for Caithness for seventeen years, and was admitted in 1901.

HERE AND THERE

HAPPY NEW YEAR

TO ALL whom it may concern, a Happy New Year. If you turn back to January, 1849, you will see that what was most worrying the profession then was the Attorneys' Tax, and that everyone else was wondering how to cut ten million or so off general taxation and so manipulate the remainder that it didn't hurt. 1949 might still be a happier New Year if we could solve that problem. A Happy New Year to all the benevolent lawyers who are going to give free legal aid (by Act of Parliament) to four-fifths of the population—to the Area Committees, the Local Committees and all their wronged and expectant clients. Will it mean a boom in litigation ? If human nature runs true to form one would expect it. You remember Mr. Bumpkin in the 'eighties in the legal fantasy by Richard Harris, Q.C. ? Mr. Bumpkin having had his pocket picked while he was up in London for a particularly expensive private enterprise, the thief was to be prosecuted at the Old Bailey and to him came one Alibi, clerk to Mr. Deadandgone, acting, he said, for the Public Prosecutor. " If you like to have a counsel and a lawyer to conduct your case, sir, it shall not cost you a farthing I give you my word of honour. What do you think of that ? " And the author echoed : " What could Mr. Bumpkin think of that ? What a pity that he had not met this gentleman before ! Probably he would have brought several actions if he had, for if you could work the machinery of the law for nothing you would always stand to win."

MORE GOOD WISHES

A HAPPY New Year to those who are interested in the transmutation of workmen's compensation into industrial injury. Those skilled in such matters assure us that workmen's compensation will not go off with a bang leaving a sudden aching void, but that like the old soldier (and it has seen more than thirty years' active service) it will simply fade away and take two years to do it. Only then will the Medical Appeal Tribunals and Industrial Injuries Commissioners reign alone over the field evacuated by their Honours of the County Courts, their lordships of the Court of Appeal and the noble and learned lords of the High Court of Parliament. By then the practitioners most concerned should have been able to take thought and shift the emphasis of their operations to some other gainful employment, perhaps to that never-failing source of perplexity, Rent Restriction, that is until there are no landlords left but local authorities when, in accordance with a very recent decision of the House of Lords, Rent Restriction will cease to exist, councils being above *that* law, and we will all have to be very careful how we say good morning to the rent collector, lest we find ourselves in the street next week and no reasons given. Finally, a Happy New Year to the subscribers to the Journal, who, if the paper prospects hold good, may perhaps get, not only the best wishes of the publishers, but more reading matter for their money.

A SCOTTISH HOUSE

THE House of Lords has wound up its sittings before the Christmas recess with the delivery of its decision in a Scottish case. Before that, apart from hearing a swan-song appeal in one of the last Workmen's Compensation matters, it has been occupied with a succession of appeals from across the Border. The learned gentlemen from Edinburgh might almost have fancied at one time that they had never left home, for in London they found a supreme tribunal consisting of three fellow Scots and an Irishman, my Lord Normand (Lord Justice General and Lord President of the Court of Session from 1935 to 1947) presiding. It must surely be unparalleled for a Lord of Appeal to be appointed in one year and find himself in the chair before the end of the next. (" In the chair " is deliberate, for in these days of hearings in committee there is no Woolsack till judgment day.) My Lord Morton of Henryton in the County of Ayr was the second Scot. Though long honoured in England he was born in Ayrshire, educated at Kelvinside (before migrating to Cambridge) and, in the first Great War, granted a commission by His Majesty in the Highland Light Infantry. My Lord Reid, the third of the distinguished Northerners, though long an exile from his native land, serving it in the House of Commons, was popular at the Scottish Bar, both as Lord Advocate and Dean of the Faculty. The Irishman was, of course, my Lord MacDermott, now well-established in this sister island. Before the end of the sittings Lord Simonds returned from a slight indisposition to infuse into this Celtic assembly his own unmistakably English atmosphere.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Sale to the same Purchaser of an undivided Equitable Interest in Freeholds occupied by a Company and Shares in that Company — CONVEYANCE OF THE EQUITABLE INTEREST — FINANCE (1909–10) ACT, 1910, s. 73

Q. Is a certificate under s. 73 of the Finance Act, 1910, as amended by the Finance Act, 1947, applicable in the following case ? A and B are the co-owners of Blackacre, on which they conduct a business as directors of a private company. A notified B that he intended to sell out his half share of the freehold and they agreed the price to be paid by B. At the same time, or shortly after, A told B he would also like to dispose of his shares in the company and B agreed to buy them. The purchase-prices were £250 for the half share of freehold and £700 for the shares. In the conveyance of the half share of the freehold a certificate that the transaction is one not exceeding £1,500 has been inserted, but it has been contended that a certificate could properly be inserted that the transaction does not exceed £500.

A. We think that the not-over-£500 certificate could properly be inserted in the conveyance of the half share of the freehold. There is no connection as between the freehold and the shares in the company ; the sale of the interest in the one is a perfectly separate and distinct transaction from the sale of the others. The fact that the company occupies the freehold seems to us to be immaterial.

Claim for Loss of Development Value

Q. A is the owner-occupier of office premises in a business area. The town planning scheme had not got further than the preliminary proposal stage when the Town and Country Planning Act, 1947, came into operation. It is contended that, but for the 1947 Act, A could have converted his office into a shop, and that as a shop the property would have been more valuable, but that, the 1947 Act having prevented the change of user from one class to the other without payment of development charge, the property has suffered depreciation in value. A has no thought at the moment of using the premises otherwise than for offices. Is he, however, entitled to make a claim on the global fund for injurious affection or otherwise ? See ss. 61 and 62 of the 1947 Act and r. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, and s. 19 (1) (*g*) of the Town and Country Planning Act, 1932.

A. The claim against the global fund is for loss of development value by virtue of the 1947 Act, to be ascertained in accordance with ss. 61 and 62 of the Act. The computation of the restricted and unrestricted values under the former section is a matter of pure valuation of the property irrespective of the owner's intentions, and if, as appears from the question, the former value is lower than the latter, so that development value has been lost, a claim may be made provided it is not excluded by s. 63. The owner's intentions might affect the priority of his claim on the question of hardship in the distribution of the fund, but there seems no reason to suppose at present that he would not rank as an ordinary claimant without coming into a deferred category. The effect of the earlier planning legislation, including s. 19 (1) (*g*) of the 1932 Act, will necessarily be reflected in the unrestricted value so far as this legislation affected the open-market value immediately before 7th January, 1947. Under the 1932 Act planning scheme procedure, however, the " general business " zoning commonly allowed buildings to be erected and used for shops or business premises without consent ; in other words, in this zoning shops and business premises were in the same use category (see the Ministry of Health's model clauses for use in the preparation of schemes, clauses relating to building restrictions and use of land). It appears likely that the premises would have been included in such a zoning, and it may well be, therefore, that the earlier planning legislation would affect the unrestricted value little, if at all.

Company Landlord—GREATER HARDSHIP

Q. Am I right in thinking that a company landlord could not obtain possession against a controlled tenant on the ground of hardship under para. (*h*) of the First Schedule to the Rent Act, 1933, and that there is no other clause under the Rent Acts, except arrears of rent or nuisance, upon which possession could be obtained ? What I have in mind is the case of a bank who might possibly want possession of a bank flat (which has been

let to a reputable and responsible tenant for over ten years, partly for residential and partly for business purposes) in order to find room for their own staff or one of their own messengers.

A. Assuming that the freehold or superior tenancy is vested in the company, para. (*h*) of the First Schedule to the Act of 1933 cannot apply because the house or flat is not required as a residence for one of the persons mentioned in that paragraph. The company must rely on para. (*a*) or (*b*), if appropriate.

Intestacy—SPINSTER'S MOTHER SOLELY ENTITLED—GRANT TO BROTHER OF DECEASED ON RENUNCIATION OF MOTHER

Q. A died recently intestate, a spinster with an estate of approximately £2,000. She left surviving her one lawful parent only, her mother, B, who is, of course, entitled to the whole estate, and two brothers of the whole blood, C (the eldest) and D, both of whom have attained twenty-one years of age. B has expressed her desire to renounce her right and title to the grant and consents to its being issued to C, who is willing to apply for it. Will the Probate Registry officials in such circumstances issue the grant to C? If not, will they, upon D joining with his brother in the application for the grant, issue it to the two of them? Otherwise, who can and who should apply for the grant?

A. A grant will, we think, be made to C without difficulty. The oath will state that the deceased died a spinster without father, leaving B her lawful mother and the only person entitled to the estate of the deceased, who has duly renounced, and consented to the grant to the applicant, who is the lawful son of the said B.

NOTES AND NEWS

Professional Announcements

Messrs. ALLEN & OVERY announce that they have taken into partnership with effect from 1st January, 1949, Mr. H. P. RODIER.

Messrs. HUGH PRINCE & CUMMING, of 2 Basinghall Square, Leeds, 1, and Messrs. WM. & E. H. MIDDLEBROOK, of 10/12, East Parade, Leeds, 1, announce that they have removed to 36, Park Square (North), Leeds, 1, where the two practices have been amalgamated under the title of MIDDLEBROOK, PRINCE AND CUMMING.

Honours and Appointments

Mr. CHARLES LAMOND HENDERSON, K.C., has been appointed Recorder of Bedford in succession to the Hon. Victor Russell, who has resigned.

Mr. J. C. CONROY, of Eire, has been appointed a Circuit Court Judge for the period from 1st January to 30th June, 1949.

Mr. ALEXANDER DOUGLAS, solicitor, has been appointed Clerk and Treasurer to the Governors of George Heriot's Trust.

Mr. J. P. GLYNN, solicitor, of Tuam, has been appointed Coroner for North Galway.

Mr. A. M. JAMES, solicitor, has been appointed Deputy Town Clerk of Brighouse. He was admitted in 1937.

Mr. F. B. W. LINNITT has been appointed Deputy Town Clerk of Crosby, Liverpool. He was admitted in 1941.

Mr. K. McCAW has been appointed Assistant Solicitor to Leeds City Council. He was admitted in 1947.

Mr. P. W. MUSTHER has been appointed Town Clerk of Stalybridge. He was admitted in 1947.

Mr. P. REVINGTON, solicitor, has left the Ipswich Town Clerk's Department to take up a post in the Isle of Wight. He was admitted in 1944.

Mr. J. SYKES has been appointed Chief Committee Clerk to the Brighouse Corporation.

Mr. G. P. THOMAS, solicitor, of Swansea, has been appointed to a joint board of the National Coal Board (South Wales Division) and the National Union of Mineworkers (South Wales and Forest of Dean Area), as district referee for all unsettled disputes affecting districts in the South Wales and Forest of Dean coalfields. He was admitted in 1932.

Personal Notes

Mr. A. W. Lipsham, aged eighty-three, has just completed fifty-four years as managing clerk with the firm of Devonshire and Co., London, E.C.2. He continues to work with his colleague Mr. W. Penton, who has fifty years' service to his credit.

Mr. J. P. Brodie, senior assistant solicitor and assistant prosecuting solicitor to Stoke-on-Trent Corporation, is leaving the service of the corporation at the end of the month to enter into private practice in the district.

Mr. F. E. Stafford, solicitor, of Leicester, recently addressed the Leicestershire and Rutland branch of the Landowners' Association, when he stressed that under the Town and Country Planning Act, development charge is based on the increase in value of the land owing to its new use.

Mr. J. A. Cooke, solicitor, of Sheffield, was married on 16th December to Miss Beryl M. Jarvis, of Dore.

Mr. J. P. Marshall Carr, LL.B., a partner in the firm of Taylor and Sons, of Blackburn and Manchester, was married on 15th December to Miss Marjorie Turner, of Whalley.

Mr. Geoffrey Knowles, of Morecambe, solicitor, was married on 1st January to Miss Joan Elizabeth Holloway, of Morecambe. Miss Holloway was formerly a member of the staff of her husband's firm.

Mr. C. C. Amphlett Morton, senior partner in a Kidderminster firm of solicitors, is emigrating on retirement to Southern Rhodesia.

Miss Ray Hulsner, Cape Town solicitors' clerk, was appointed one of the scorers for the Third Test Match between England and South Africa.

Mr. S. E. Brown, Skipton solicitor and Craven coroner, is the new president of the Craven Drama Festival.

Mr. P. H. Race, solicitor, of Saltergate, Lincoln, has had his one-act comedy "Men Walk at Midnight," published by the Methodist Youth Department. Mr. Race is vice-president of the Methodist Association of Youth Clubs.

Miscellaneous

A series of six lectures is to be given, in February, March and April, under the auspices of the Institute for the Scientific Treatment of Delinquency (8 Bourdon Street, Davies Street, London, W.1.), on "Difficult and Delinquent Personalities: the Freudian Approach." Fee for the course is 7s. 6d.

The Ministry of Town and Country Planning is supporting the Bristol City Council in its plans to redevelop Broadmead as a central shopping area. This is made clear in a letter confirming the council's refusal to permit the building of a number of temporary shops and one permanent shop in and around Wine Street and Castle Street.

At a meeting of the Faculty of Procurators of West Lothian, it was unanimously resolved that Pt. I of the Legal Aid and Solicitors (Scotland) Bill should be opposed as completely unworkable and unfair, both from the point of view of the legal profession and the public, and that it be remitted to a sub-committee to consider, in association with other societies, the practical proposals which should be forwarded in substitution.

SOCIETIES

THE SHEFFIELD AND DISTRICT LAW CLERKS' SOCIETY has arranged a series of lectures on Insurance and Rent Restriction. The lectures will be held in January and February.

Wills and Bequests

Mr. Amos Craddock, solicitor, of Thorne (Sheffield), left £16,889, net personalty £16,298.

Mr. F. E. Drummond Hay, solicitor, of Bath, left £2,979 19s., net personalty £2,849 0s. 5d.

Col. J. M. Brasted Longden, solicitor, left £36,178, net personalty £35,894.

Mr. G. F. Nalder, solicitor, of Falmouth, left £98,783, net personalty £93,223.

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